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The Eleventh Year of the Reign of KING RICHARD II.  
A N D E N D I N G W I T H  
The Sixteenth Year of the Reign of KING GEORGE III.  
W I T H  
TWO ALPHABETICAL TABLES TO THE WHOLE.  
T O W H I C H I S P R E F I X E D,  
A N E W P R E F A C E,  
By FRANCIS HARGRAVE, ESQUIRE.

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VOLUME THE SIXTH.

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A Complete







# A COMPLETE COLLECTION OF TRIALS, &c.

CLXXXV. *Proceedings in PARLIAMENT against James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithfdale, Robert Earl of Carnwath, William Viscount Kenmare, and William Lord Nairn, upon an Impeachment for High-Treason, Feb. 9. 1715.*  
2 GEO. I.

THE above-named Lords having created a Rebellion, and levied War against his Majesty, and being taken Prisoners whilst so doing; His Majesty, the Parliament at that time sitting, it was moved in the House of Commons, January 9, that they should not be left to the ordinary method of Prosecutions, but be proceeded against by way of Impeachment: Upon which Occasion Mr. Lockhart spoke as follows:

After the general Assurances this House has given his Majesty, one Moment ought not to be left without taking some effectual Step towards making them good. The first and great Concern is to put an End to this Rebellion, not only to quiet the present Commotion, but to extinguish the very Possibility of its being renewed: For such Ends every Gentleman will agree to stand, then the Head of the King, in such manner as will enable him to carry on the Conduct of the War: You will do this with absolute Certainty, from the entire Knowledge and Experience you have of the Will and Justice of his Majesty, who was, in such manner, one of our Candidates for Parliament last year: In him, then to present the common Will of his People; and wherever extraordinary Affidavits the present Situation of Affairs shall require, will be compass'd no longer than it is public Necessity calls for. The next useful and necessary Step is the National Pledge, which is incumbent on this House, in Duty to the King, as well as in Justice to the People; and as a useful and disagreeable Part as this must be, yet when the Design of the Enemy is known to be to defend and to invade, as to strike at the Crown upon the King's Head, and to involve the Nation in the Calamities of a Civil War, the House cannot exert themselves too early, nor with too much Vigour; and as the House shall secure themselves on this Occasion, I am perswaded if the Effort will be successful. The Point which shall be then in this Indulgence, will animate the Friends of the Government; and at Home and Abroad; and the Terror is most strike at our Enemies, as well as equal to that, and contribute as much to the Common Safety, as any other Preparation that has or can be made. I wish I could say or think that the Rebellion was the Project of those only who appear'd to lead it, or that it is the Result of the weak or rash Councils of a few who passionately were, I wish I could say, that it is the Work of People only, or of those few Persons who are wicked or weak enough openly to join in it. I wish I could say, that it was a Plot and of York, and that it is not as dangerous a Plot, than ordinary Apparitions, and to suspect it. But I think it plain, that it is the Effect of many Years Labour, of the joint and united Labour of great Numbers, both Protestants and Papists, the plain and necessary Consequence of the Dissensions which have been carrying on for some Years past: To blame a right Judgment of the Nature of this Rebellion, I think it necessary for us to look back and consider the natural Tendency of the Public Proceedings of late Years, and the Connection they bear with the present unfortunate State of Things; when Men so far from Punishment suffer'd themselves to become State Prisoners, and the great Merit of such Men was under the Pretence of Asserting the Dominions of the Church of England, to maintain the Revolution, I could never understand any other Design or Intention, from those Practices, than to undermine the Foundation of the Protestant Succession. I remember you said upon a very famous Occasion, by a very honorable Gentleman, that the consequence of the happy Revolution, could not be other than that it was made way for another. However wicked and dangerous their Practices were, they made me great an Impression, and contributed a great deal to the present Calamity; for as the Design of the Enemy grew more avowed, State Principles of another kind were advanced, which still conducted to the same End. 'Twas well known what Industry was used to seducate the Notions of Hereditary Right to the Crown, in Opposition to the Settlement which had been made of it in the House of Hanover by the Authority of Parliament, and what other View than to weaken that Settlement. Every one remembers what extraordinary Part were taken to poison the People with this dangerous Notion; and that those who made the full

Count to Men in Power, were such who espous'd this Opinion in the most notorious manner. I cannot forget what Tenderess a certain Divine \* of the Church of England was towards those States, whilst under Prosecution, for the most impudent Label that ever was published against any Government, that had either Will or Power to maintain itself. I think the Punishment that was inflicted on that Gentleman light enough, but I cannot avoid taking Notice of a remarkable Passage which then alarm'd every thinking Man, and will, on time or other, deserve the Consideration of this House, viz. The Order from the Government, counter-sign'd by a Secretary of State to the Judges of the Queen's Bench, after the Judgment pass'd, to supersede the ignominious Part of the Punishment, by Reason of the Sacred Distinction of the Criminal: By which the most unaccountable and dangerous Distinction was introduced; and which Proceeding could bear no other Construction, than as a License and Protection, even from the Government, to Men in Holy Orders, to propagate that detestable System with Impunity, and the Character of the Person, whose Right is Justice to have acquiescence for Guilt and Innocence of the Punishment, became an Indemnity against the Reproach of it, even by the Authority of the Government itself. I remember very well in what Manner every Thing of that Nature was treated in Westminster-Hall; what Severities were exerted against those Persons who had Courage enough to resist the Intereit of their Country, and of the Protestant Succession, at the same time that the Persons of Hereditary Right enjoy'd all Indulgence. I mention these Things on no Uncertainty, having been an Eye-witness of them myself, and it having fallen to my Share to bear some Part in them: This was one of the most successful Parts of the Scheme of those who had fix'd their Eyes on the Pretender: The House need not be told how far it has operated, to the Prejudice of the Protestant Succession. I could give many other Instances of this kind, all which promoted the same End: The great Distinctions that were made to exclude the Oaths that had been made for the Security of the Government: The Endeavours that were used to poison the People with false Views of the Danger of the Church, and the little Care that was taken, to lay no weight on, to instil into the Youth of the Kingdom, such Principles as were consistent with the true Intereit either of Church or State. I look upon these Things to be the Foundation of the Scheme that is now, by this Rebellion, carrying on zero Execution, and I own that in this Respect the Authors of it were just to their Conscience, for by these Arts the very Principle on which the Protestant Succession is founded was shaken; and tho' the Methods of doing it were base and vile, yet the Difficulties and Uncertainty that was created by them in the Minds of the People was not only for the Glorie that was desired. I must crave leave to present in Mind of other Parts of this Scheme that were carrying on at the same Time. The Enemies to the present Government seeking right for their own Purposes, by all Methods to attack the Confidence of the People, as to the Legitimacy and Justice of the Settlement of the Crown in the House of Hanover, thought it necessary at the same Time to doable, as far as they could, those Persons who had been most remarkable for their Services in the Support of it: The great Effort was made at that great Man, who is not only the Honour and Ornament of his Country, but the Glory of the Age is here in. I think I shall not be subjected to Flattery at this Time, nor, I believe, at any Time, with Respect to that Great Man. Many who now hear me, remember the Part I took in Vindication of that Great Man, whilst his Character was under Debate in this House. I cannot forget the Rage and Invective with which he was pursued; nor how much Strife was laid upon obtaining the Censure of Parliament upon him. The Aspersions thus thrown upon him did not hurt that Great Man; and whatever Endeavours may at any Time be, used to lessen him, will hurt none but those that shall promote them: But yet those vain Endeavours were a very useful Part of the Scheme thus carrying on. 'Twas a necessary Step for those Men to put him out of the Way, whose very Name and Appearance, at that Time, would have been sufficient to raise Annies in Favour of the Protestant Succession and the Liberties of his

\* Dr. Beddard.

† The Whigish Right of the Crown, &c.

‡ The Duke of Marlborough.



















and of *John* as *Prisoner*, and being assured if he went thither he should be made such *Prisoner*, he did not obey the *Sheriff*, but in all humble Manner applied for their Indulgence in dispensing with his being committed to *Custody*, offering to give any Bail for his peaceable and quiet Behaviour, which being refused, and being at that time in so ill a State of Health, that a Confinement in *Sticks of Cattle* would have endangered his Life, he was forced to abscond, and kept private till several of the Persons mentioned in the said Impeachment, with many others of his Neighbours, appeared in Arms very near the Place where the said Earl lay concealed; and then he inconsiderately and unfortunately (with four of his *Domestics*, and no other Persons whatever) joined them, and proceeded in the Company, to the Places in the said Articles of Impeachment more and more, but he knew nothing of the intended Intention till they were admitted in Arms. The said Earl is deeply sensible of his great Offence, and in attaching Del. y, not being willing to give your Lordships, or the Honorable House of Commons, any unnecessary Trouble, he does with a burning, regret to his Cause, confess, that he is guilty of the Treason in the said Articles of Impeachment contained, and thence himself at his Majesty's Feet, imploring his Royal Mercy; and to incline his Majesty's Pity, and reduce your Lordships to recommend him as an *Object* of Pity, he begs Leave to shew your Lordships, that when he, and the rest that were with him at *Prother*, had engaged in a Battle, a Collection of Arms being agreed to, they had Intimation from his Majesty's Officers, that they forbore, they might expect the King's Mercy; and if they absconding with followers of Conditions stipulated with Generals, in a new *Relief*, and afterwards agreed to and confirmed by their *Sovereign*, they were pardoned on such Recommendation, together with the Consideration of his Majesty's former Clemency, to forgive almost any *Prisoner*, who by the Loss of great Numbers of his Majesty's good Subjects were forced, which by an ultimate Resistance would inevitably have been destroyed, and therefore he most humbly begs your Lordships would be pleased to report to his Majesty, that his Majesty in such Circumstances, not doubting that by your Lordships powerful Intervention he shall find, that as he performed the Duty of a good Christian, in endeavouring to prevent the Effusion of Blood, he is held the Part of a wise Man in yielding upon a *Shew* of your Lordships, and he begs to be pardoned, which the Honorable House of Commons are agreed to in Name of his Majesty, they will not anticipate to prevent him from having a Share in the Benefit of that Mercy.

*Nichols*.

And the said Earl of *Nichols* being asked if he had any thing further to say, he said he had nothing left to say to the King's Mercy, and his Answer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Carmarthen* was brought to the Bar, and having there likewise answered, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

He said he had no Answer in Writing, but desired to throw himself on the King's Mercy, and humbly implored their Lordships' Intervention to his Majesty on his Behalf, and shewed the House, if the same were granted, he should think himself obliged to live under the strictest Test of Loyalty to his Majesty, and as to the said Articles, he said he was guilty of the High Treason contained in the said Articles of Impeachment against him, and the said Plea was recorded accordingly.

And he withdrew.

Then the Viscount *Kenners* was brought to the Bar, and having there likewise answered, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

He said he had no Answer in Writing, but was guilty of the Charge of High Treason contained in the Articles of Impeachment against him, and begged the House to intercede with his Majesty for Mercy, and his Plea was recorded accordingly.

And he withdrew.

Then the Lord *Nilew* was brought to the Bar, and having there likewise answered, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

He said he threw himself upon the King's Mercy, and begged the Intervention of the House to his Majesty, and as to the Articles of Impeachment against him, he said he was guilty of the High Treason contained in the said Articles, and his Plea was recorded accordingly.

Then he delivered a Petition at the Bar, and the same was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble Petition of William Lord *Nilew*,

SHOWN,

THAT your Petitioner was educated, and hath always continued a Protestant, according to the Discipline of the Church of England; and though, by reason of some mistaken Principles he unwarily imbibed in his tender Years, he did not in all respects conform to the late Revolution, yet, under the late Necessities, for that he had married an *Heiress*, in whom all the Rights of your Petitioner's Estate is invested; and though he never took the Oath, yet he always peacefully submitted to, and lived quietly under, the Government as by Law established, until the breaking out of this Rebellion, in which your Petitioner very inadvertently did join, but as the Lord *Alford* and *Adherents* had for a considerable Time made themselves Masters of *Perth* and *Dundee*, and thereby furnished your Petitioner's whole Estate, and came to your Petitioner's House, lying in the middle between those Places.

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Your Petitioner heartily repents of this rash Undertaking, and solemnly declares he knew nothing of any previous Conspiracies, or Conspiracies in Favour of the Pretender, before he actually appeared in Arms; nor knew any thing about sending the *Forth*, or till the Morning he was sent over under *Macdonald's* Command, and then was so far from approving of that Expedition, that though, to avoid the Imputation of Cowardice he would hazard his own Person therein, yet your Petitioner desired back all his Dependents, and was very anxious by his Son and fact Servants, who would not leave him in a Time of Danger, though often desired, not to go, yet your Petitioner privity to any Design of this kind, into England, for having been long a *Scotsman*, he had no Pretensions to Knowledge in the Land Service.

Your Petitioner being now sensible of his Error, hath pleaded guilty to the Articles of Impeachment of High Treason exhibited against him by the Honorable House of Commons, and shewed himself at his Majesty's Feet: humbly beseeching your Lordships, in Consideration of the deplorable Circumstances of your Petitioner and his wife's Children, to recommend him to his Majesty for that Mercy, which is the Time of his Surrender he was made to believe he might reasonably expect.

This will shew your Petitioner and his Petitioner under the greatest Obligations of Duty and Gratitude to his Majesty, and he shews he ever to his Majesty's Lordships the merciful Instruments of procuring such a gracious Deliverance.

And your Petitioner shall ever pray, &c.

N. A. R. N.

And being asked if he had any thing further to say, he said he had not, and withdrew.

Lord *High-Steward*. My Lords that are the *Prisoners* in the Bar, I am to acquaint your Lordships, that upon any Occasion which shall be offered you to speak 2 years, you are to direct your Speech to the Lords in general, and so is any other Person that shall have Occasion to speak to this Court.

Lord *High-Steward*. Your Lord of *Derwentwater*, *William Lord Widdington*, *William Earl of Northampton*, *Robert Earl of Carmarthen*, *William Viscount Kenner*, and *William Lord Nairne*, Your Lord impeached of High Treason by the Commons of Great Britain in Parliament assembled, which Treason is contained in the Articles that have been lately read, so that you have severally pleaded guilty, and are ther by convicted. What say you, *James Earl of Derwentwater*, why Judgment should not pass upon you according to Law?

Earl of *Derwentwater*. I only humbly beg Leave of my Noble Peers to report to the Articles of Impeachment exhibited against me by the Honorable House of Commons.

But the Terms of your Lordships just Sentence, which at once deprive me of my Life and Estate, and complete the Misfortunes of my Wife and innocent Children, are so very upon my Mind, together with my Understanding, that I am not able to allege what may, excuse my Offence, if any thing can do so. I have considered my guilt, and my Lords, that I was really intreated without any Promise of mine, that I hope your Lordships will be convinced by me to be particular. I beg Leave to observe, I was wholly unprovided with Arms, Horses, Arms and other Necessaries, which in my Situation I could not have wanted, had I been privy to any formed Design: As my Officer was taken, so my Submission was only, when his Majesty's Generals brought his 4 or 5 men Horses for securing the Town of the *Common*, I voluntarily yielded myself, without which the *Common* might easily have proved successful. And whilst I committed *Holgate*, the great *Chapel*, and his Majesty's Clergy, and the repeat of Encouragement I had to show for Mercy, by surrendering to them, determined me, and I accordingly declared my Resolution to remain with his Majesty's Officers, and from that Time submitted myself to his Goodwill, on which I still entirely depended. I humbly beg to shew the House, of your Lordships, and of the Honorable House of Commons, in an *Heiress*, which I humbly beseech your Lordships should shew me not singularly, in your generous Compassion for my Life, which will I can beg of my Majesty.

Lord *High-Steward*. My Lord *Derwentwater*, your Lordships' Voice hath not been perfectly heard to the End of the Court, therefore I ask you whether you have pleaded any Thing in Article of Judgment?

Lord *Derwentwater*. No, my Lords.

Lord *High-Steward*. Lord *Widdington*, what have you to say for yourself why Judgment should not pass upon you according to Law?

Lord *Widdington*. MY Lords I have abandoned all Manner of Defence ever since I still surrendered myself to his Majesty's Royal Clemency, and only now beg Leave to report to your Lordships some Circumstances of my unhappy Case, which I have already set forth in my Answer.

Your Lordships be before you an unfortunate Man, who, after leading a private and retired Life for many Years, but by an early and accidental Alliance exposed himself and his Family to the greatest Calumnies and Malignity, and is now upon the Point of receiving the severest Sentence decreed by any of our English Laws.

I do protest to your Lordships, that I was never privy to any concerted Measures against his Majesty's Royal Person, or the established Government: As to the Information in *Northampton*, I only heard of it accidentally the Night before it happened, and being long after informed that all my Neighbours and Acquaintance had met in Arms, a Crowd of confused and mistaken Notions hurried me to meet them, to propose Resistance of joining them; a Resolution which, I must own, I could never face calmly till I saw that *Plutarch* and *other* when I find myself under in the public Acknowledgment of my great Faults and Folly. After then plunging out of my Depth, as unprepared for such an Enterprise as the *Common* was undertaken, I confess, for my own Particular, upon the *British* *Rebellion*, which myself with any such Intention of the Properties of my Fellow-Subjects. But on the contrary, I always endeavoured to encourage Humanity and Moderation during the whole

Court



words of our miserable Expulsion; and in order to make the best Advantage in my Power for the present, I had been guilty of it. I can justify this, and I was no small Degree instrumental in procuring a general Submission to his Majesty. But, my Lords, however willing or desirous, either for one reason might be to get a speedy End to those unfortunate troubles, still-intervention, the first and most powerful Law of Nature, would have, without the Possibility of gain and fraud, but not the Officers who command the Royal Forces given in Hopes of Mercy, and assisted were laboured to a Piece of the greatest Clemency in the World. These Hopes, and the Assurance, answered the strongest Cheatsmen, overcame all remaining Difficulties, and gave the fatal Stroke to a general Surrender, which was the 10th of March of British Blood was procured, and a great Thought was done to these Parts of his Majesty's Dominions.

My Lords, it was my first Attempt was rash and unpremeditated, as I thought, and proposed Misdemeanors and Humour towards my Fellow-Subjects, and as I did not so obstinately persist in my Fate, but was the first who proposed an early Submission to his Majesty, I humbly hope my humble Case, and my humble Mother, will raise a generous Compassion in your Lordships, and the Honourable House of Commons; and I must earnestly request both your Lordships, and that honourable House, to become Intervenors with his Majesty in my behalf, for that Mercy which I was encouraged to hope for when I first forced, and which I have ever since with the utmost Confidence relied on.

I have only to add my most fervent Assurance before this August Assembly, that no future Time shall ever find me wanting in the most reasonable Duty and Gratitude to that merciful Prince who gave me my Life, and has been a Father to five miserable and distressed Orphans; and I shall always retain the highest Esteem and Veneration for your Lordships and the Honourable House of Commons.

*Lord High-Steward.* *Lord Widdrington,* for greater Certainty I ask your Lordship whether you have pleaded any thing in Arrest of Judgment?

*Lord Widdrington.* No, my Lords, I have not.

*Lord High-Steward.* *William Earl of Newcastle,* what hast thou your Lordship to say for yourself why Judgment should not pass upon you according to Law?

*Lord Newcastle.* MY Lords, I have confessed myself guilty, relying on his Majesty's Mercy; and I beg leave to shew your Lordships I was never guilty to any Plot or Design against his Majesty's Person or Government, and was unprovided with any Neighbours for such a Purpose; but rashly and inconsiderately, with only four of my Servants, joined those who appeared in Arms in my Neighbourhood, and was one of the last who went into them.

At present, my Lords, his Majesty's Generals give great Hopes and Encouragement to believe, that surrendering to his Majesty's Mercy, was the only Way to obtain it, with opposed Assurances that his Majesty was a Prince of the greatest Clemency.

Upon those Hopes and Assurances I submitted myself, and still entirely depend on his Majesty's Goodness, earnestly beseeching your Lordships, and the Honourable House of Commons, to intercede with his Majesty on my behalf.

And I solemnly promise your Lordships I shall, during the Remainder of my Life, pay the utmost Duty and Gratitude to his most gracious Majesty, and the highest Veneration and Respect to your Lordships and the Honourable House of Commons.

*Y. J. Hay.* *Steward.* I must also ask your Lordship (your Lordship's Name is in the indictment) whether you have pleaded any thing in Arrest of Judgment?

*Lord Newcastle.* No, my Lords, I have not.

*Lord High-Steward.* *Lord Ker, what have you to say for yourself why Judgment should not pass upon you according to Law?*

*Lord Ker.* MY Lords, I find not trouble this great Assembly with a Repetition of what I said, when formerly before your Lordships and his Majesty's Council.

Those three Noble Lords question that favourable Opinion of my sincere and just, as to believe that want of Experience and Knowledge of the Law was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only thing which I can hope or wish for is his Majesty's Mercy; he has the Character of a merciful Prince: Should I please him to think me a proper Object for it, 'tis 'till I must consider myself a very unworthy one; all I can say, my Lords, is, that the Remainder of my Life shall convince his Majesty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body, the People, now expelling your Lordships Judgment so to Life or Death: Should it be for Life, my Demerits and Carriage for the future will be such, as none of your Lordships shall be ashamed of having shew'd me Compassion; but should it be for Death, God's Will be done; to my last Hour I shall pray for the Nation's and your Lordships Prosperity; having this Comfort in my present Distress, that your Lordships are my Judges at this Tribunal: And yet a greater Comfort have I, that I am soon to appear before a greater, where I can't despair of finding Mercy and Forgiveness for all my Sins.

I beg Almighty God's Pardon for that I have already said his Majesty's, and I do it now; and I do humbly beg leave, once more, and perhaps the last Occasion that ever I shall have, to desire that your Grace, this noble House, and the Honourable House of Commons of Great Britain, who are now here, would intercede with his Majesty for me.

I take my Leave of your Lordships, and with you all I beg leave.

*Lord High-Steward.* Does your Lordship offer any thing in Arrest of Judgment?

*Lord Ker.* No, my Lords.

*Lord High-Steward.* *Lord Ker, what have you to say for yourself, why Judgment should not pass upon you according to Law?*

*Lord Ker.* MY Lords, I am truly sensible of my Crime, and want Words to express my Repentance. God knows I never had any personal Prejudice against his Majesty, nor was I ever accessory to any personal Design against him. I humbly beg my noble Peers and the Honourable House of Commons to intercede with the King for Mercy to me, that I may live to serve myself, the dutifulness of his Subjects, and to be the Means to keep my Wife and four sons, Children from Starving; the Thoughts of which, with my Crime, make me the most unfortunate of all Gentlemen.

*Lord High-Steward.* My Lord, your Voice not being heard to this End of the Court, I would know whether, in what you have said, you have offered any thing in Arrest of Judgment.

*Lord Ker.* No, my Lords.

*Lord High-Steward.* *Lord Nairn,* what have you to say for yourself why Judgment should not pass upon you according to Law?

*Lord Nairn.* I AM very sensible how unfit I am to plead my own Cause before your Grace (my Lord High-Steward) and this august Assembly; and therefore, though I could try such a course, to extenuate the Crime for which I stand impeached, yet I chuse rather to lay my whole Stress upon the King's Mercy, for which he is so renowned, and which I was put in hopes of at the Time of my Surrender. In Consideration whereof, and in Compassion to afflicted Wives and twelve Children, I shall beg, by the Mediation of your Grace, my noble Lords, and the Honourable House of Commons, I may obtain a Pardon, proceeding, that in Gratitude for so signal a Delinquency, I will, to the End of my Life, remain a dutiful and obedient Subject to his most gracious and sacred Majesty King George.

*Lord High-Steward.* My Lord, for greater certainty, I ask your Lordship whether you have offered any thing in Arrest of Judgment?

*Lord Nairn.* No, my Lords.

*Serjeant at Arms.* O Yes, O Yes, O Yes! Our Sovereign Lord the King thrice charges and commands all manner of Persons to keep Silence upon Pain of Imprisonment.

*Lord High-Steward.* JAMES Earl of Dorsetshire, William Lord Widdrington, William Earl of Newcastle, Robert Earl of Carrick, William Viscount Kenmore, William Lord Cairns, You stand impeached, by the Commons of Great Britain in Parliament assembled, of High-Treason, in treasonably imagining and compassing the Death of his most sacred Majesty, and in conspiring for that end to levy a bloody and destructive War against his Majesty, in order to depose and murder him; and in levying War accordingly, and proclaiming a Pretender to his Crown to be King of these Realms.

Which Impeachment, that one of your Lordships, in the Introduction to his Plea, supposes to be out of the ordinary and common Course of the Law and Justice, is yet so much a Course of Proceeding according to the Common Law, as any other whatsoever.

If you had been indicted, the Indictment must have been removed and brought before the House of Lords (the Parliament sitting). In that case you had (no true) been accused only by the Grand Jury of one County in the precinct, the whole Body of the Commons of Great-Britain, by their Representatives, are your Accusers.

And this Circumstance is very observable (to exclude all possible Suppositions of Obliquity as to the Method of proceeding against you), That however all great Assemblies amongst us are apt to offer on other Points, You were impeached by the unanimous Opinion of the House of Commons (not one contradicting).

They found themselves, it seems, so much concerned in the Preservation of his most truly sacred Majesty, and the Protestant Succession (the very Life and Soul of their Kingdoms), that they could not omit the first Opportunity of taking their proper Part, in order to be signal and necessary an Aid to his Majesty's Justice.

And that the whole Body Politic of this free Kingdom has in a manner set up in its own Defence, for the Punishment of those Crimes, which, 'twas justly apprehended, had a double Tendency to the everlasting Dissolution of it.

To this Impeachment you have severally pleaded, and acknowledged your entire guilt of the High-Treason therein contained.

Your Pleas are accompanied with some Variety of Matter, to mitigate your Offence, and to obtain Mercy.

Part of which, as those of the Commons have led to have attended your Surrender (seeming to be offered rather as Arguments only for Mercy, than any thing in Mitigation of your proceeding Guilt) is not proper for me to take Notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I should take this Occasion to make some Observations upon your Lordship upon it, so the end that the Judgment to be given against you may clearly appear to be just and Righteous, as well as Legal; and that you may not remain under any fatal Error in respect of a greater Judicature, by reflecting with less Honor and Respect on the Guilt you have contracted than it really deserves.

It is alleged by some of your Lordships, that you engaged in this Rebellion without previous Consent or Deliberation, and without suitable Preparations of Men, Horses and Arms.

If this should have appeared true, on some of your Lordship asserting it, I desire you to consider, that as it exempts you from the Circumstance of compassing that Treason, so it very much aggravates your Guilt as that Part you have undoubtedly borne in the Execution of it.

For it shows, That your Inclination and rebel were so well known (which could only be from a continued Series of your Words and Actions), that the Counters of that bold Design depended upon you, and thereon judg'd rightly. That your Zeal to engage in this Treason was so strong, as











That your Petitioner has several Specialties and Matters of great Moment, which he conceives necessary to be a Part of his Answer, and which cannot be drawn into Form, without the Assistance of his Counsel and Solicitors.

Forasmuch therefore, as this Affair is to one of the greatest Importance, may it please your Lordships to assign my Counsel, *Philipps*, and Mr. *Proffers*, to be Counsel, and *Charles Adams*, and Mr. *James Leigh* to be my Solicitors; and in order that they may have Access to me from Time to Time during my Trial; as also that your Lordships would be pleased to allow Mr. *George Horne*, a Minister of the Church of England, to have Access to me from Time to Time, seeing I am confined in a Room alone.]

And your Petitioner shall ever pray, &c. WINTON.

The said Earl of Winton was directed to withdraw; and being withdrawn accordingly.

The Order made on Thursday last upon his Petition was read, as also the several Orders made on Monday last.

Ordered, That the Count I mentioned in the said Petition be assigned him, and that either of the said Solicitors be likewise assigned, and that he have Time to put in his Answer to the said Articles till Monday next. And that the Clergyman mentioned in his Petition, being his Relation, may have Access to him, provided he will lay in Calabryth with him during his Confinement.

Then the Earl of Winton was again called in, and the Lord Chancellor acquainted him, that the House had considered his Petition, and assigned him the Counsel he desired, and would assign him either of the two Solicitors he should chuse; and that the Clergyman above-mentioned might come to him upon the Condition before expressed. Then the said Earl of Winton naming Mr. *Horne*, the House accordingly assigned him for his Solicitor, and ordered, that the said Counsel and Solicitor may have Access to him from Time to Time at all reasonable Hours; and be withdrawn.

Die Sabbati 23 Januarii, 1715.

A Petition of George Earl of Winton was presented to the House and read, praying that his Lordship would allow him such further Time for putting in his Answer, as the said Lordships shall think fit.

Ordered, That the said Petition be rejected.

Die Lunæ 23 Januarii, 1714.

The Earl of Winton being brought to the House according to Order by the Lieutenant of the Tower, the Gentleman-Usher was commanded to bring him to the Bar, where he himself until he was directed by the Lord Chancellor to sit; and his Lordship acquainted him that this was the penultimate Day appointed by the House for his putting in his Answer to the Articles of Impeachment exhibited against him by the House of Commons; and asked him if he was ready to put in his Answer. He thereupon made some Excuse, and desired further Time for that Purpose.

And was directed to withdraw.

Ordered, That the Earl of Winton be called in, and acquainted, that this House, upon considering his Petition on Saturday last, for further Time to put in his Answer to the Articles of Impeachment exhibited against him, did reject his said Petition; and having indulged him more than any of the Lords impeached, are full of Opinion (this being the penultimate Day for putting in his Answer) to allow him no further Time, and that the Conference of his refusing to plead which will ensue in Law, in that Judgment will be awarded against him, as if he had pleaded guilty. Then,

He was accordingly called in, and the Lord Chancellor acquainted him with the said Matter.

He thereupon delivered in at the Bar his Answer fairly expressed on Parchment, which was read.

Die Sabbati 28 Januarii, 1715.

The Commons replied to the Answer of the Earl of Winton.

Die Mercurii 8 Februarii, 1715.

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Thursday the sixteenth Day of this instant February be, and is hereby appointed for the Trial of George Earl of Winton at the Bar of this House in *Windsor-Hall* upon the Impeachment of High-Treason exhibited against him by the House of Commons.

Die Veneris 10 Februarii, 1715.

Upon reading the Petition of George Earl of Winton, setting forth, that he had a Prison in the House on Wednesday last, when their Lordships appointed Thursday next for the Petitioner's Trial, desiring that Consideration might be had to the Distance of the Place, and the Season of the Year, for bringing up of his Witnesses, both *James Adams*, and *James Swales* and other Persons, but the Noble Peer who promised, and would have moved the said Petition, not being present at the Time of making the Motion for appointing a Day of Trial, the said Petition was not presented in Form, which occasioned the Appointment of so short a Time, whereas it is altogether impossible to prepare any Thing in order for the said Trial: And praying that the said House will grant an Order to compel the several Witnesses following (viz.) *John Gordon*, *George Trever*, *Guise Hogg*, *John Stewart*, all Servants to the Earl of Winton; *James Adams*, *James Swales*, *Wille to Mrs. Daniel Nobels* in France, *Adam Perrot*, Clerk of the Episcopal Meeting-House in France, *Christopher Sims* in Paris-Saint, Lieutenant-General, — *Wille*, — *Forsler*, Esq; — *Miller*, Esq; *Capt. Alexander Stevens*, — *Michael de Burdon*, — *Adler*, and — *Todd*, Bailiff of *Middleburgh*, and the School-master of *St. James*, to appear before this House at the Trial, to give Evidence on Behalf of the Petitioner; and to allow such Time for their coming hither, as, in regard to the Distance of the Place, and the Season of the Year, and the Importance of the Affair, their Lordships, in their great Wisdom and Justice shall think reasonable: It is Ordered, That the Time appointed for the Trial of the Petitioner in *Windsor-Hall* be, and is hereby, enlarged to Thursday the eighth Day of March next: And that the several Persons above-named be, and are hereby, required to attend this House on Thursday

trial put off  
on Thursday  
March 8.

the said eighth Day of March, as Witnesses on Behalf of the Petitioner, except such of the said Persons as are now Prisoners for High-Treason; as that they shall have the Proceeding on this House for their safe coming, and going, during the Time of the said Trial.

Die Lunæ 5 Martii, 1715.

Upon reading the Petition of George Earl of Winton, setting forth, that his Agents have used all Diligence possible in moving the Order of this House for the Attendance of his Witnesses, and now they are all on their Way hither, Part by Sea and Part by Land. And that the Nature of his Detainer is such, that if the Witnesses were arrived, as soon as they are, the Time would be too short to prepare his Bench, and instruct his Counsel; and praying that the Time appointed for his said Trial may be enlarged for such Time as their Lordships, in their great Justice and Wisdom, shall think proper, in a Case of so great Consequence: It is ordered, that the Time appointed for the Petitioner's Trial be, and is hereby, enlarged, till Thursday the fifteenth Day of instant March, at ten of the Clock in the Forenoon.

Die Lunæ 12 Martii, 1715.

A Petition of George Earl of Winton was presented to the House and read, setting forth, that his Agents have used all possible Diligence in getting his Witnesses hither, and several of them are lately arrived, but for the most natural of them, though they all be on their Way hither, we not yet come up, some of them being lame and others very infirm, so that they are not able to travel so quickly; and praying, that the Time appointed for his Trial may be enlarged for such Time as their Lordships, in their great Justice and Wisdom, shall think proper, in a Case of so great Consequence.

And all Debate thereupon, and sending the Order made in relation to the said Trial, *Charles Manning*, the Petitioner's Solicitor, was called on, and examined upon Oath at the Bar, touching the Allegation of the said Petitioner; and failing to make good the same;

And being withdrawn,

It was moved to reject the Petition.

And the Question being put whether the said Petition shall be rejected, it was resolved in the Affirmative.

Die Martii 13 Martii, 1715.

Several Orders were made for governing the Peace, and touching the Course of Proceedings, to and at the ensuing Trial; and among them,

Ordered, That the Counsel assigned the said Earl of Winton may be present when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any such shall arise.

Die Mercurii 14 Martii, 1715.

Upon reading the Petition of George Earl of Winton, praying that his House will be pleased to assign and add Mr. *Amely* and Dr. *Brookes* to his Counsel formerly assigned, and that they may have Access to him during his Confinement: It is Ordered, that the Counsel above-named be assigned the Petitioner, to be heard on Matters of Law, but not to Matters of Fact, so as not to put off the Petitioner's Trial, and that if y<sup>e</sup> or any of them, have Access to the Petitioner from Time to Time, at all reasonable Times.

A Motion being made, that the following Persons, whose Names were contained in a List exhibited at the same Time, on Behalf of the Earl of Winton, might be summoned as Witnesses for the said Earl at his Trial; being then, as already is, in or near the City of London.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, That *John Gordon* at *Riches*, *Alexander Knight* Winter in *St. George's*, *William Kite*, *Thomas Bate*, *John Watson*, all three of *Sutton*, *Mrs. Alexander Currie* of *Canterbury*, *Adam* a *Lawyer* of *Sutton*, *Dr. Andrew*, a *Physician*, *Dodds* *Gentleman* a *Divine*, *Dr. John Ingham*, *Major Swaine* *George Trever*, and *George Hogg* at *Swain*, be, and are hereby required to attend this House in *Windsor-Hall*, to-morrow, at ten of the Clock in the Forenoon, in order to be examined as Witnesses on the Behalf of George Earl of Winton at his Trial.

The House being informed that the Earl of Winton desired that General Carpenter might be examined as a Witness at his Trial.

The said General Carpenter being a Member of the House of Commons;

A Message was sent to that House by Mr. *Hofford* and Mr. *Leavelle*, to acquaint them, that the Lords do desire that they will give Leave to the said General Carpenter to be examined at the said Earl's Trial.

Ordered, That the Witnesses which shall be produced by the Earl of Winton to be examined in his Defence, shall be examined upon Oath, which Oath to be administered to the Witnesses on both Sides at the said Trial shall be this:

The Evidence which you shall give at this Trial, concerning George Earl of Winton, Juror at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God, and the Contents of this Book.

Die Jovis 15 Martii, 1715.

The Messenger sent Yesterday to the House of Commons, returned Answer, that the Commons have given Leave to General Carpenter to be examined as a Witness at the Trial of George Earl of Winton.

The House was then adjourned to *Windsor-Hall*.

Began in Westminster-Hall on Thursday, March 15, 1715-16.

The first Day.

ABOUT nine of the Clock, the Lords came from their own House into the Court erected in *Windsor-Hall*, in the Manner following.

4

T19























We will call our Witnesses, and begin with William Calderwood, who was Quarter-Master the whole time with Lord Bunsow.

Sir J. Jekyll. My Lords, we desire that William Calderwood may be sworn.

L. H. Steward. Is it William Calderwood you call?  
Sir J. Jekyll. My Lords, we desire William Calderwood may be sworn. And he was sworn by the Clerk accordingly.

Sir J. Jekyll. Mr. Calderwood, pray, acquaint my Lords with what you know concerning the Rebellion, in any Part that the Noble Lord at the Bar had in it, all the Story according to your own Method.

L. H. Steward. Do you hear what Question is asked? You are upon your Oath; give an Account of what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it.

Calderwood. Upon the Eleventh of October I went, with about Seventy Horse, to join my Lord Cornwall, my Lord Bunsow, and my Lord Kenmare at Aghast, where the Pretender was proclaimed.

Sir J. Jekyll. We desire that he may acquaint your Lordships, what Number of Men they had at Aghast.

Calder. One Hundred and Fifty.

Sir J. Jekyll. What Number of Men?

Calder. One Hundred and Fifty.

Sir J. Jekyll. Was the Pretender at the Bar amongst them? and did he bring in any with him?—Calder. Yes.

Sir J. Jekyll. About what time did he come in?

Calder. Towards the Evening of the Eleventh Day.

Sir J. Jekyll. What Day?—Calder. The Eleventh.

Sir J. Jekyll. What Number did the Lord Bunsow bring with him?

Calder. About Fourteen.

L. H. Steward. You speak of the Pretender at the Bar; he came in with Fourteen Men?—Calder. Yes, my Lord.

Sir J. Jekyll. Were they all armed? or how many were armed?

Calder. I don't know whether all were, but the most part of them were, with Swords and Pikes.

L. H. Steward. You have said at what Place they were, but your Voice did not reach higher, at what Place?

Calder. At Aghast.

Sir J. Jekyll. When my Lord at the Bar joined the Rebels, what did they do? Go on, and tell your Story.

Calder. They went to Loughmoe.

Sir J. Jekyll. What did the Lord at the Bar join them there?

Calder. The next Day.

Sir J. Jekyll. What was done there?

Calder. The Pretender was proclaimed the next Day.

Sir J. Jekyll. Was the Noble Lord at the Bar assisting at the proclaiming of him?—Calder. Yes, he was.

Sir J. Jekyll. In what manner did he assist?

Calder. With his Sword in his Hand.

L. H. Steward. Who did still at the Proclamation with drawn Sword?

Calder. The Earl of Bunsow.

Sir J. Jekyll. Whence did you march from thence?

Calder. To Ardara.

Sir J. Jekyll. Whither did you march from thence?

Calder. To Loughmoe.

Sir J. Jekyll. And whither then?

Calder. To Henish.

Sir J. Jekyll. Go on.

Calder. The Pretender was proclaimed there.

Sir J. Jekyll. Was the Lord Bunsow present at the Proclamation?

Calder. Yes.

Sir J. Jekyll. Whence did you go from thence?

Calder. To Jellary.

L. H. Steward. Was the Pretender proclaimed there?—Calder. Yes.

Sir J. Jekyll. Who were present?

Calder. The Earl of Bunsow, Cornwall, and all the Lords.

Sir J. Jekyll. Whence did you march thence?—Calder. To Redberry.

Sir J. Jekyll. What happened there?

Calder. We were joined by General Forger.

Sir J. Jekyll. How long did you stay there?—Calder. Two Nights.

Sir J. Jekyll. Was the Pretender proclaimed at Redberry?—Calder. No.

Sir J. Jekyll. What Place did you go next to?—Calder. To Water.

Sir J. Jekyll. Whither from thence?

Calder. To Killybeg, where we were joined by the Highland Foot.

Sir J. Jekyll. What Foot do you mean?

Calder. The Highlanders.

Sir J. Jekyll. Who commanded them?—Calder. Brigadier Macdonald.

Sir J. Jekyll. From Killybeg, whither did you go?

Calder. Back again to Jellary.

Sir J. Jekyll. Whither from Jellary?—Calder. To Henish.

Sir J. Jekyll. What happened at Henish of those Places?

Calder. Nothing.

Sir J. Jekyll. At Henish, did nothing happen there?—Calder. No.

Sir J. Jekyll. Was the Pretender proclaimed at Henish at either of the Times?

Calder. Yes, the first time, but not the second.

Sir J. Jekyll. Who were present?—Calder. All the Lords.

Sir J. Jekyll. Name them?—Was the Pretender at the Bar there?

Calder. Yes.

Sir J. Jekyll. From Henish, the second time, to what Place did you go?

Calder. To Loughmoe.

Sir J. Jekyll. What happened at Loughmoe?

Calder. Five or Six Hundred of the Highland Foot went from us.

Sir J. Jekyll. Was there any Evidence come in to bring these Five Hundred Highlanders back again?

Calder. I don't know of any.

Sir J. Jekyll. Who went to them? Did any of those that were in Arms go to them?

Calder. I was not there when they went off.

Sir J. Jekyll. Did the Noble Lord attempt to go with them, the Pretender at the Bar?

Calder. No, at Jellary the Earl of Bunsow went up to them, to make them come back; where the Foot designed to go, and the Horse were drawn up; and they would have nobody come to them but the Pretender.

L. H. Steward. I do not hear you; What do you say?

Calder. At Jellary the Earl of Bunsow went to them.

Sir J. Jekyll. Did he declare any thing after his Return, about their going off, or their not returning?

Calder. No, not at Jellary.

Sir J. Jekyll. Any where else?

Calder. I heard him at Loughmoe say, it was not his Fault they were gone off.

Sir J. Jekyll. Pray, might not my Lord Bunsow have gone off with them, if he would?—Calder. Yes, he might.

Sir J. Jekyll. From Loughmoe whither did you go?

Calder. To Broomage.

Sir J. Jekyll. Whither next?—Calder. To Perwick.

Sir J. Jekyll. Whither next?—Calder. To Appleby.

Sir J. Jekyll. Whither next?—Calder. To Rendall.

Sir J. Jekyll. Whither next?—Calder. To Killy-Loughdale.

Sir J. Jekyll. What happened there?

Calder. The Pretender was proclaimed at the two last Places.

Sir J. Jekyll. Who was there?

Calder. I saw him there.

Sir J. Jekyll. What?

Calder. The Earl of Bunsow at Killy-Loughdale.

Sir J. Jekyll. Whither did you go from thence?

Calder. To Loughmoe.

Sir J. Jekyll. Was the Pretender proclaimed there?

Calder. Yes.

Sir J. Jekyll. Who were present?

Calder. Lord Bunsow, Cornwall, Kenmare, and Niall Oble.

Sir J. Jekyll. How did they enter the Town of Loughmoe?

Calder. Swept in Hand.

Sir J. Jekyll. Was there any Arms or any Guns seized?

Calder. Yes, six Cannon were taken.

Sir J. Jekyll. From whence did they take them?

Calder. From a Shop.

Sir J. Jekyll. Speak up, and tell my Lords.

Calder. They seized six Guns.

Sir J. Jekyll. Whence did they take them?

Calder. From a Shop.

Sir J. Jekyll. What became of them?

Calder. They carried them to Appleby, and mounted them there.

Sir J. Jekyll. What time came you to Appleby from Loughmoe?

Calder. What time? We fled two Nights at Loughmoe.

Sir J. Jekyll. Sir, I desire to ask you a Question—Whether you were at Church at Loughmoe?—Calder. Yes.

Sir J. Jekyll. Who was present for there?

Calder. The Pretender as King of England.

Sir J. Jekyll. Who was at Church? Was it the Parish Church?

Calder. Yes, the Parish Church.

Sir J. Jekyll. Who was present at Church?

Calder. I don't remember.

Sir J. Jekyll. From Loughmoe whither did you go then?

Calder. We went to Appleby.

Sir J. Jekyll. What Day did you arrive at Appleby?

Calder. The Ninth or Tenth Day of November.

Sir J. Jekyll. Did the Horse and Foot arrive the same Day?

Calder. No, the Horse came in one Day, and the Foot another.

Sir J. Jekyll. How long after the Horse did the Foot come?

Calder. The next Day; then the Pretender was proclaimed. The Horse came on on Wednesday, the Foot on Thursday.

Sir J. Jekyll. How was your Diffinition between the Scots and English, by Cockade?—Calder. Yes.

Sir J. Jekyll. What was the Diffinition?

Calder. The Scots had Blue and White, and the English had Red and White.

Sir J. Jekyll. Did the noble Lord meddle with any Cockade?

Calder. Yes, he had one at Henish.

Sir J. Jekyll. Did he distribute them?

Calder. Yes, he distributed them from my Hands.

L. H. Steward. Who do you speak of? Raise your Voice.

Calder. I say, my Lord, the Earl of Bunsow had a Cockade at Henish, and took several of them from my Hands, and gave them away as he thought fit.

Sir J. Jekyll. You saw the Earl of Bunsow at Appleby when the King's Forces came thither; do you remember what passed afterwards?

Calder. My Lord, I saw him, he had Sword and Pistols; he was a Foot by the Church-yard.

Sir J. Jekyll. As you came along to Appleby, acquaint my Lords whether you know any think of the public Revenues being collected?

Sir J. Jekyll. Before that, when my Lord was on Foot with Sword and Pistols going towards the Church-yard, was there any Force drawn up there?

Calder. Yes, both Horse and Foot were drawn up in the Church-yard. Sir J. Jekyll. While my Lord was in Company, and in the March, was there any Troop formed?

Calder. Yes, there was a Troop.

Sir J. Jekyll. Who had any of those Troops?

Calder. My Lord Bunsow had the First.

Sir J. Jekyll. Of whom did he Troop consist?

Calder. In consisted partly of Gentlemen, and partly of his own Servants.

Sir J. Jekyll. By whom were they paid?

Calder. By my Lord Bunsow.

Sir J. Jekyll. How much a Day?

Calder. Two Shillings a Day.

Sir J. Jekyll. In what manner was the Troop accounted?

Calder. Very well, with Swords and Pistols.



*Mr. Geo.* Did my Lord's Servants retain his Livery in the Army?  
*Answer.* He had five in Livestock.  
*Mr. Geo.* What were the rest?—*Colbr.* Domestic Gentlemen.  
*Mr. Geo.* Did my Lord command only that, or any other Body?  
*Answer.* He commanded a Squadron.  
*Mr. Geo.* In your Passage, did my Lord disavow any Unfaithfulness, or  
 any other thing, of being them?  
*Answer.* He never did that I know of.

*Mr. Geo.* I think you quarter'd him; Did he complain of his Quar-  
 ters?  
*Answer.* He said he'd me to give him good Quarters.  
*Mr. Geo.* And accordingly you did for him?—*Colbr.* Yes.  
*Mr. Geo.* We will go on. What happened at *Prigton*? What Time  
 did the King's Forces come there?  
*Colbr.* We came on *Wednesday*, they came on *Saturday*.  
*Mr. Geo.* Tell my Lords what happen'd after the King's Troops came  
 to us.

*Colbr.* We defeated the Town two Nights.  
*Mr. Geo.* With a little they tarried?  
*Colbr.* They turn'd out of the Town.

*Mr. Geo.* What part belong'd to the King's Troops attack it, and  
 what to the *Parliament*?—*Colbr.* Yes, and we defend'd it.

*Mr. Geo.* What was there any Provision made to secure the Town? Ac-  
 cording to the Town was it defended.

*Colbr.* Yes, we call'd it in every Street.  
*Mr. Geo.* After what manner? How?  
*Colbr.* We call'd it in every Street.

*Mr. Geo.* During the Time the King's Troops were at the Town, What  
 Share did my Lord *Wintour* bear in the Defence of it? Where was he?

*Colbr.* I saw him go towards the Church-yard.  
*Mr. Geo.* Was there a Body of Men with him in the Church-yard?

*Colbr.* Yes, he was.  
*Mr. Geo.* With a few of my Lord joined the Men, and in his March, was  
 there any thing of Money?

*Colbr.* There was some, as they call'd it, a Coin.  
*Mr. Geo.* What was done with that Money? if my Lord hath a  
 Mind to show any Acquaintance, he is at Liberty to do it.

*Mr. Geo.* My Lord, if you have any Question to ask, propose it,  
 and it shall be asked.

*Mr. Geo.* I am content that I desire my Counsel may examine him.  
*Mr. Geo.* I told your Lordship your Counsel are not to assist  
 your Lordship in cross-examining the Witnesses; you have a Liberty of  
 cross-examining them yourself, by proposing your Questions, and they  
 will be asked by the Court.

*Mr. Wintour.* I never examined a Witness in my Life, I desire my Coun-  
 sel may do it for me.

*Mr. Geo.* Have you any Questions?  
*Mr. Wintour.* My Lord, I hope you will allow my Counsel to speak for  
 me.

*Mr. Geo.* Have you any Question you desire to be ask'd, and it  
 shall be ask'd?

*Mr. Wintour.* I desire my Counsel may ask for me; it is very hard to  
 have cause to speak for me, and there are twenty against me.

*Mr. Geo.* My Lord *Wintour*, I hope now you will be better heard.  
 If you have any Question to ask this Witness, if your Lordship pro-  
 poses it, it shall be ask'd him.

*Mr. Wintour.* My Lord, allow my Counsel to speak for me, I have but  
 two.

*Mr. Geo.* My Lord, I have acquainted you, (but apprehend you  
 did not hear me) that the Law of the Land doth not allow it to  
 ask this Witness any Questions, nor your Lordships, we assist call au-  
 other Witness.

*Mr. Geo.* *Wintour* is *Colbr.* *Wintour*. Direct your Answer this way.  
 You have mention'd several Proclamations of the Pretender, was there any  
 at which my Lord, the Prisoner at the Bar, was not present?

*Colbr.* I did not see him at the Proclamations at *Prigton*.  
*Mr. Geo.* At how many other Places did you see him?

*Colbr.* I saw him at *Wintour*, *Prigton*, *Wintour*, and *Kirby-Lessels*, and  
*Leicester*, where the Pretender was proclaimed.

*Mr. Geo.* Did he join in calling him to be proclaim'd, or did he  
 seem to resist it?

*Colbr.* No, my Lord, he was always among the rest.  
*Mr. Geo.* With your Lordship's Favour, the next Witness is *James*  
*Langley*, we desire he may be sworn.

*Mr. Wintour.* My Counsel will propose, first, allow my Counsel to speak  
 for me, I am not used to speak in such Assemblies.

*Mr. Geo.* Who do you call next, Gentlemen?  
*Mr. Geo.* *James Langley* in *sworn*, we desire he may give your Lord-  
 ships an Account, whether he was at any time at *Wintour* when the Pre-  
 tender was proclaim'd, and what Share my Lord *Wintour* had in it—I be-  
 lieve it will be better to have something for the Witnesses to stand upon—  
 I'll a little, till something is brought to hand upon.

*Mr. Geo.* (After some struggle to find a way.)  
*Mr. Geo.* Was you at *Wintour*?  
*Langley.* Yes.  
*Mr. Geo.* What part there? and who was at that Place?  
*Mr. Geo.* Keep your Face, and direct your Answer this way;  
 the Gentlemen on the left Hand ask you Questions, keep your Face  
 this way.

*Langley.* I saw several Gentlemen.  
*Mr. Geo.* But did you see my Lord *Wintour* there?  
*Langley.* I saw him there; the second time at *Wintour*; the third  
 Time at *Kendall*; and the last at *Prigton*.  
*Mr. Geo.* You saw him at these Places you have mention'd, What  
 happened at either of these Places?  
*Langley.* The first time I saw him, he was riding on a grey Horse, mount-  
 ed with Sword and Pistol; the second Time sitting with the Guard; and  
 at *Kendall* on Horseback, when he came out of Town, I saw him riding  
 on Horseback; and at *Prigton*, I saw him riding at the Market-Place, with  
 other Gentlemen along with him.

*Mr. Geo.* Was there any Proclamation made at any of these Places?  
*Langley.* Yes, there was a Proclamation at *Wintour*; very well did they  
 proclaim'd the Pretender.

*Mr. Geo.* Did you hear the Proclamation?  
*Langley.* I heard the Voice, but not the Words pronounced.

*Mr. Geo.* Who assist'd at it?  
*Langley.* A great many Gentlemen on Horseback.

*Mr. Geo.* Was the Prisoner at the Bar there?  
*Langley.* I did not see him.

*Mr. Geo.* Was the Prisoner at the Bar at *Leicester*?  
*Langley.* I do not know, I was not there.

*Mr. Geo.* Was he at *Prigton*?  
*Langley.* Yes, he was there.

*Mr. Geo.* Was you present when they proclaimed the Pretender  
 there?  
*Langley.* I was standing at a great Distance, but did not hear it, but  
 saw the Army.

*Mr. Geo.* From those Places where you march'd, in what manner  
 did you march?  
*Langley.* Yes, in squadrons.

*Mr. Geo.* Did the noble Lord at the Bar command a Squadron?  
*Langley.* I did not know what his Lordship's Command was; he rode  
 at the Head of the first Squadron.

*Mr. Geo.* Did he march along with the Forces?  
*Langley.* I had very much Occasion to be his Lordship. I believe he  
 did.

*Mr. Geo.* Do you know any thing of raising Money.  
*Langley.* I heard talk of it only.

*Mr. Geo.* What Troops were with the Rebels?  
*Langley.* I can't tell how many.

*Mr. Geo.* Do you remember any one Troop?  
*Langley.* Yes, there was *Langley's*.

*Mr. Geo.* Any beside?  
*Langley.* There was one went by the Name of my Lord *Wintour's*; but  
 I knew not the Name.

*Mr. Geo.* Who was there in that Troop of *Langley's*?  
*Langley.* Several of Gentlemen.

*Mr. Geo.* Was there any other Servants?  
*Langley.* Some private Men and Servants.

*Mr. Geo.* What were the Servants?  
*Langley.* The Captain, &c. *Langley*, had two or three himself.

*Mr. Geo.* Was there any other Servants?  
*Langley.* No, I don't think I saw any other.

*Mr. Geo.* Did you know the Troop assist'd my Lord *Wintour's*?  
*Langley.* I do not know it, there was one called *his*.

*Mr. Geo.* Was there any Servants in it?  
*Langley.* There were Servants in that Company.

*Mr. Geo.* Were they assist'd with sword and Pistol?  
*Langley.* Yes.

*Mr. Geo.* Was you at *Prigton* when the King's Forces invaded it?  
*Langley.* Yes.

*Mr. Geo.* How did the Prisoner behave himself?  
*Langley.* I cannot tell.

*Mr. Geo.* My Lords, we have done with our Examination of this  
 Witness.

*Mr. Geo.* My Lord *Wintour*, if you would ask this Witness  
 any Questions, propose it, and it shall be asked.

*Mr. Geo.* (After a long pause.)  
*Mr. Geo.* Our next Witness is *James Langley*, we desire he may be  
 sworn.

*Mr. Geo.* My Lords, we desire he may be asked whether he was in  
 the Rebels Army.  
*Mr. Geo.* My Lord, you hear the Question; direct your Answer this way.

*Commons.* Yes, I was there.  
*Mr. Geo.* Under what Command?  
*Commons.* Under the Command of Captain *Maclean*.

*Mr. Geo.* And in what Regiment?  
*Mr. Geo.* Turn your Face this way, that your Voice may be heard.

*Commons.* My Lord *Charles Murray* Regiments.  
*Mr. Geo.* Whole Command was you under?  
*Commons.* Under Captain *Maclean*.

*Mr. Geo.* In what Regiment?  
*Commons.* In a Lord *Charles Murray's* Regiment.  
*Mr. Geo.* Will you give a general Account of what you know from  
 the first time you came into the Army of the Rebels?  
*Commons.* I join'd them at *Wintour*, and then we proceeded to a Place  
 called *Langley*; then we march'd to *Dun*, from thence to  
*Kilgus*; within ten Miles of *Kilgus* we met the Herle. Then we went into  
*Kilgus* to *Wintour*. I saw my Lord *Wintour* there; the next Day we re-  
 tired. Then we march'd to *Wintour* from *Wintour*; from *Wintour* to *Wintour*,  
 from *Wintour* to *Kilgus-Lessels*, and from *Kilgus-Lessels* to *Wintour*,  
 where I saw my Lord *Wintour* at the Head of his Horse with a  
 Trumpet sounding before him; I saw them march; we had a Day at  
*Leicester*, and the Herle went into *Prigton* the next Day, which *Wintour*  
 I saw my Lord *Wintour* with other Lords.

*Mr. Geo.* You have mention'd proclaiming the Pretender at one or  
 two Towns, pray give an Account at how many Places you observed  
 that he was proclaim'd?  
*Commons.* I heard him proclaim'd at *Dun*, at *Kilgus*, and at *Leicester*.  
*Mr. Geo.* I do not know if at any of the Places you observed  
 the Prisoner, my Lord *Wintour*?  
*Commons.* As *Langley* I did observe him to go into the Ring when  
 they were going to proclaim him, but at the Time of the Proclamation  
 I did not see him, being in the outmost Part of the Ring.



*Att. Gen.* Please to acquaint my Lords, whether in your March you took any Prisoners?

*Commons.* When we were near *Perrieh*, we took a great many Prisoners. I did not see them taken.

*Att. Gen.* Was it by Force at the Bar with you in that March?

*Commons.* I can't truly describe it. I saw him there.

*Att. Gen.* Whence & you he run off?

*Commons.* At *Kelley*, when this Court j. u'd us.

*Att. Gen.* Where did you take the Prisoners?—*Commons.* At *Perrieh*.

*Att. Gen.* Did the noble Lord at the Bar declare you to be his?—*Yes?*

*Commons.* I heard he was not coming into England. I only heard this by Report.

*Sir J. Toph.* Why was your Lord House?—*Commons.* Yes.

*Sir J. Toph.* Was your Lord House a Sheriff?

*Commons.* No, only Bishopric *Admiralty* and the Foot.

*Sir J. Toph.* What Town did they run to?—*Commons.* Yes.

*Commons.* On Saturday, to my cell, I remember, they were at *Steele House*, then the Duke of *Argyll* turned back, and that Night about six or seven o'Clock we returned to *Steele House*, and had there *Sunday, Monday and Tuesday*.

*Att. Gen.* At the Time that *Highlanders* came to *Steele House*, was this Lord there?—*Commons.* No, I do not know that he was.

*Att. Gen.* Do you know any thing of the public News being gathered at *Dart, Exeter* and *Windsor*?—*Commons.* Yes.

*Att. Gen.* Did they give any Kingdoms?

*Commons.* Yes, they gave *Revenge*. I saw one which was to the Effect: After the Year and Date, then, Received such a Sum of Money as Executed, due from each a Person to such a Person.

*Att. Gen.* During the Time the King's Forces attacked *Perrieh*, what did you observe at *Perrieh* that Day?

*Commons.* What I observed of my Lord *Wintoun* was this: I was there by the Church-Yard, there I saw my Lord *Wintoun* in the Church-yard, with my Lord *Kearney* and *Durhamwater* at the Time or the Action, but I did not see him in the Action, and whether he had Pistols or not I can't be positive.

*Att. Gen.* Were there any Persons at the Market-Place?

*Commons.* I was not at the Market-Place.

*Att. Gen.* You was at the Church-Yard?—*Commons.* Yes.

*Sir J. Toph.* When you observed my Lord *Wintoun*, what did you see him do?

*Commons.* I observed nothing, but he was like the rest, riding to and fro with the rest.

*Sir J. Toph.* Did you see him sitting at the Proclamation of the Pretender at *Perrieh*?

*Commons.* I saw him go into the Ring with the rest, but I did not see him at the Time of the Proclamation.

*L. H. Steward.* I believe in this Narrative his Voice did not reach the End of the Court, therefore if he hath said any Thing proper to be taken Notice of, you will do well to hear it over again.

*Att. Gen.* We ask him, whether he knew the noble Lord to be at any of those Places sitting at proclaiming the Pretender?

*Commons.* I did not observe him but at *Langley*.

*Att. Gen.* What happened there?

*Commons.* I saw proclaiming the Pretender there, and I saw him go into the Ring.

*Att. Gen.* But did you not observe him at the Time of proclaiming the Pretender?

*Commons.* I saw him go into the Market-Place with the rest.

*L. H. Steward.* You saw him go in when the rest went in to proclaim the Pretender?—*Commons.* Yes.

*Att. Gen.* Did he then ride at the Head of the Foot Horse?

*Commons.* Yes, he rode at the Head of some Horse, and a Troop of Footmen following him.

*Att. Gen.* Was that the Time when the Pretender was proclaimed at *Langley*?—*Commons.* Yes.

*Att. Gen.* Whether had my Lord his Sword by his Side, or had he it drawn?

*Commons.* Really I cannot be positive to that.

*L. H. Steward.* My Lord *Wintoun*, will you ask this Witness any Questions?

*L. Wintoun.* My Lords, I am not prepared, so I hope your Lordship will do me Justice; I was not prepared for my Trial, I did not think it would come on so soon, my material Witnesses not being come up, and therefore I hope you will do me Justice, and not make use of *Casper-Law*, as we said to lay in our Country, hang a Man full, and then judge him.

*L. H. Steward.* You hear? My Lord *Wintoun*, please to speak it again.

*L. Wintoun.* I said that I was not prepared for my Trial, I did not think it would come on so soon. Some Gentlemen are just come up, please your Lordships to let me know what they say, that I may be the better able to make my Defence.

*L. H. Steward.* If your Lordship will ask this Witness any Question, now is your Time; but if what you are saying is your Defence, you should observe that all the Consents have done.

(Robert Patten is called and sworn.)

(Proclamation made for Silence as usual.)

*Sir W. Thompson.* With your Lordships Permission I beg Leave to ask this Witness, whether at any Time he was in Company with these Rebels, and when he first joined them?

*Patten.* I joined them on the 20th of October, at *Windsor*.

*Sir W. Thompson.* Pay, Sir, will you give an Account what part from that Time you did take till they were taken.

*Patten.* I went first from *Windsor* we march'd to *Kelley*.

*Sir W. Thompson.* Did you see my Lord *Wintoun* at *Windsor*?

*Patten.* I can't say I did.

*Sir W. Thompson.* Did you see him at *Kelley*?

*Patten.* I saw him when the Proclamation was there.

*Sir W. Thompson.* What Proclamation?

*Patten.* The one from the Pretender.

*Sir W. Thompson.* Was my Lord *Wintoun* present?—*Patten.* Yes.

*Sir W. Thompson.* In what Manner?

*Patten.* He appeared among the rest of the Gentlemen.

*Sir W. Thompson.* Was he armed?—*Patten.* Only his Sword, that I saw.

*Sir W. Thompson.* Pray what passed afterwards?

*Patten.* We came to *Kelley*, and from thence we went to *Highburg*.

*Sir W. Thompson.* Where did you go?—*Patten.* To *Highburg*.

*Sir W. Thompson.* What passed there?

*Patten.* After they came to *Highburg*, they were alarmed by a Party, the thought of the King's Forces, but it happened to be some of their own Part.

*Sir W. Thompson.* What happened on that occasion?

*Patten.* I saw the Lords, and among the rest my Lord *Wintoun*, at the Head of some Horsemen then drawn up.

*Sir W. Thompson.* In what Manner?

*Patten.* The Earl of *Wintoun* was drawn up with his Men, and the Lord with his Men.

*Sir W. Thompson.* With what Intent?

*Patten.* They apprehended General *Carpenter*, with the King's Fortunes, was about to attack them.

*Sir W. Thompson.* You say my Lord *Wintoun* marched out at the Head of some Horsemen?

*Patten.* I can't say I saw him march out, but I saw him at the Head of some Horse.

*Sir W. Thompson.* What happened afterwards?

*Patten.* They returned to *Highburg* and had all Day, and the next Day they marched to *Harlow*.

*Sir W. Thompson.* What happened at *Harlow*?

*Patten.* At Midnight we were again alarmed with a Party.

*Sir W. Thompson.* What happened upon that?

*Patten.* I saw my Lord *Wintoun* at the Street.

*Sir W. Thompson.* Was there any Preparation made for Defence?

*Patten.* Yes, I saw the men put out to defend themselves.

*Sir W. Thompson.* You saw my Lord *Wintoun* there?—*Patten.* Yes.

*Sir W. Thompson.* In what Manner?

*Patten.* He had his Sword by his Side.

*Sir W. Thompson.* When you went from that Place, wheredid you go then?

*Patten.* We went to *Langley*.

*Sir W. Thompson.* What passed there?

*Patten.* We went there till about Morning, when we consulted whether to march for *Harlow* or for *Stedley*; a Party of Horse went for *Harlow*. The *Highlanders*, a great Part of them went off there, and would not march for *Harlow*.

*Sir W. Thompson.* Was my Lord *Wintoun* with them at their going off?

*Patten.* I saw my Lord *Wintoun* go off, and come up again; I spoke to my Lord upon that Account.

*Sir W. Thompson.* What did his Lordship say?

*Patten.* Yes, I can't tell any more of it I knew the Country.

*Sir W. Thompson.* When the Foot went off at *Langley*, did my Lord go with them?

*Patten.* I saw him go up to them, and make a Halt.

*Sir W. Thompson.* But he came back again?—*Patten.* Yes.

*Sir W. Thompson.* At that Time, if my Lord had had any Inclination to it, whether might he not have gone off?

*Patten.* Yes, I can't tell any more of it I knew the Country.

*Sir W. Thompson.* Whether did you march from *Langley*?

*Patten.* To *Langley*.

*Sir W. Thompson.* Did any thing happen at *Langley*?

*Patten.* We marched through.

*Sir W. Thompson.* Whether did you go then?—*Patten.* To *Bransford*.

*Sir W. Thompson.* Whether from thence?—*Patten.* To *Perrieh*.

*Sir W. Thompson.* What happened there?

*Patten.* There was the *King's Cavalry*, whether that *Puff Blowers* were the *Milieu*, I can't tell; they were got together, and upon our advancing they dispersed themselves.

*Sir W. Thompson.* Where was my Lord *Wintoun* then?

*Patten.* I saw him among the *King's Lords* there, after his usual manner, on Horseback, with Sword and Pistols.

*Sir W. Thompson.* Was his Sword drawn?—*Patten.* No.

*Sir W. Thompson.* Whether did they go then?

*Patten.* They went to *Apply*.

*Sir W. Thompson.* What passed at *Apply*?

*Patten.* They went from *Apply* to *Kendall*.

*Sir W. Thompson.* What happened there?

*Patten.* A Proclamation was read, as at each of the Towns.

*Sir W. Thompson.* Did you for my Lord *Wintoun* at any of these Proclamations?—*Patten.* No, I did not.

*Sir W. Thompson.* Where did you go then?—*Patten.* To *Kirby-Lansdale*.

*Sir W. Thompson.* Did any Thing happen remarkable there?

*Patten.* I dined with the *King's Lords* at *Kirby*.

*Sir W. Thompson.* What happened there? and what Healths were drank there?

*Patten.* The Pretender's Health, and Success to our Cause, that was the usual Health.

*Sir W. Thompson.* Was my Lord *Wintoun* there?

*Patten.* Yes; they were my Lord *Kearney*, *Cornwall*, and the other Lords.

*Sir W. Thompson.* Did he drink the Health among the rest?

*Patten.* All the Table did.

*Sir W. Thompson.* From thence wheredid you go?

*Patten.* To *Langley*.

*Sir J. J. At the Place where you drank Healths, was there any other remarkable Health?*

*Patten.* The usual Health was good Success to the Cause in Hand.

*L. H. Steward.* Who drank that Health?—*Patten.* All the Company.

*L. H. Steward.* Who was in Company? was the Prisoner at the Bar in Company?

*Patten.* Yes, he was.

*Sir T. Thompson.* When you came to *Langley*, in what Manner did you enter that Town?

*Patten.* We entered that Town more regularly than any other we had marched through.

*Sir W. Thompson.* After what Manner?

*Patten.* They marched into the Town with their Swords drawn, and the











After this the Gentlemen went into the Town, my Lord Downshire and Mr. Mordaunt came out to us. Mr. Mordaunt and my Lord Downshire and I heard them frequently repeat their Request to the General for Terms, and I heard Mordaunt give a particular Account of the Bravery and Hardiness of his Troops. Mr. Mordaunt told him he might have proved and used them of that kind pleased, and then it would have been seen, whether the King's Troops, or a parcel of Rabbits, would have held the better Part. Mr. Mordaunt received them with the utmost Derision and Contempt, and gave them no hope of Mercy either directly or indirectly.

At 6. M. Did you ever hear any other of the Officers offer them any other Terms?  
 Sir J. Topham. No, I did not hear any. I heard the Instructions that were given to Colonel Carter by General Webb, and when Mr. Carter came of the Town the third time, which was when he went to take their Pledge of Honour.

Sir J. Topham. Did my Lord Wintour come to give his Parole?  
 Sir J. Topham. When Colonel Carter came out, I very well remember to find he had received his Parole of Honour among the rest.

Sir J. Topham. If my Lord at the Bar hath any mind to ask this honourable Parole, Brigadier Mordaunt, any further Questions, we have done with him.

At 6. M. My Lord Wintour, do you ask this Wintour any Question?

L. Wintour. No.

Sir J. Topham. We that are enrolled by the House of Commons have no more Evidence to offer to your Lordships.

L. H. Steward. My Lord Wintour, the Gentlemen of the House of Commons have done with the Evidence they proposed to call against you, therefore it is your Lordships' time to open what Evidence you have, or if you have made any Observations on the Evidence given against you, to deliver them, or to call your own Witnesses—Take your own Method.

[*Proclamation was made for Silence as usual, and after five Pauses*]

L. H. Steward. My Lord Wintour, I acquainted your Lordship that the Gentlemen of the House of Commons, who manage the Evidence to support the Impeachment, have done with giving their Evidence, they desire to give no more against you; therefore this is the time that is proper for your Lordships to make your Defence; you are to do it in your own Method, either by calling your Witnesses, or making such Observations in your Defence as you think proper.

L. Wintour. Please to allow me some time, for my Witnesses are not yet come. I have used all possible Endeavours to get them, please to allow me all this Day Month till they come up. It will furnish nothing to examine any Witnesses after I am dead. I never for my Counsel but once, that they might instruct me what I have to say. My Lords, I am assured they will be here some time next Week.

L. H. Steward. What your Lordship said is not heard.

L. Wintour. I said I never spoke to any of my Counsel, and that but once I have sent to my Counsel, I never saw them.

[*Proclamation for Silence was made as usual.*]

L. H. Steward. My Lord offer what you have to say now, while the Court is in Silence.

L. Wintour. My Lords, the most material of my Witnesses are not come up, they will be here some time next Week; I have not said to my Counsel.

L. H. Steward. Your most material Witnesses are upon the Road, you desire some time till they come up, the effect of your Petition to the House of Lords, that is what you offer again.

L. Wintour. Yes, my Lords.

Mr. Grey. We think it our Duty to acquit your Lordships, that what that noble Lord insists upon now is not of Time. If he had any Reasons to offer to defer the Trial, he knew the proper Time and Place. Our Duty is to let your Lordships know, that when the Evidence for the Prosecution is given, the Prisoner is not to have time to delay the Proceedings, not any longer time. He ought to have applied before. We must submit it to your Lordships.

Mr. Grey. This Request of his Lordships, the Prisoner at the Bar, seems to concern the Methods of Justice, and is, we think, of great Consequence with respect to the Commons. My Lords, we should have been very far from pressing to bring on his Lordship's Trial sooner than right have been thought consistent with the Rules of Justice: But when we consider the Time your Lordships have allowed him upon several Applications he has made to your Lordships for that purpose; when we all know he has had Notice, ever since he was fined and made Prisoner at Pleas, that a Defence would be necessary, and that it concerned him to provide for it, when we reflect how long it is since the Commons exhibited their Impeachment against him, it's surprising after all to find his Lordship alleges, that he has not had Time to bring up his Witnesses. With what View his Lordship is advised to make this Defence may be easily explained. It is, my Lords, to move the Compassion of the People, and, I fear, to traduce the Justice of your Lordships Proceedings. Surely it must be confessed, that he had had more than Time sufficient, more than any other of the like Consequence hath been allowed by your Lordships great Indulgence; and yet at last he has nothing to offer, but that his Witnesses are not come, without attempting to produce one single Witness to prove that he has, or expects any one Witness to appear for him.

My Lords, the fixed Rules of Proceeding in Trials of this Nature ought to be ever sacred; and I don't know that any one Prince hath a Right to be indulged in Methods unknown to the Constitution.

My Lords, I believe, when a Prisoner impeached by the Commons puts himself upon his Defence, and is brought upon his Trial, there ought to be no Interruption or Delay whatsoever. Sure I am, it is inconsistent with the Proceedings of all other Courts of Justice.

Your Lordships, as we are informed, lately denied the Prisoner any further Time; and if it was then thought not proper to be granted, certainly now he hath put himself upon his Trial, and stands upon his Defence at your Lordships Bar, he shall not be indulged to making the same Request.

My Lords, whatever Compassion we may have for this unhappy Lord, yet the Commons, when they reflect that the Methods and Forms of Justice

are essential to Justice itself, they then think themselves obliged to oppose a new Attempt, and hope the Trial shall proceed.

L. Wintour. My Witnesses are not come up. They will be up about Monday or Tuesday next. I have had no longer time than since the 10th of February till to bring up my Witnesses, when it was very bad travelling.

[*A Motion was made as before.*]

L. H. Steward. My Lord Wintour, your Lordship hath held the Commons oppose your Request: You have heard the Reasons given for such Opposition. Both your Lordships, having heard the Reasons, yet insist upon it, or do you withdraw your Request?

L. Wintour. I insist upon it, my Lords.

[*Thus the House adjourned to the Chamber of Parliament.*]

And being returned in about an Hour, and the House resumed, and Proclamation made for Silence as usual.

L. H. Steward. My Lord Wintour, I am commended by the Lords to let you know, that they have considered your Request, and that they are of Opinion it is not now consistent with the Rules of Justice to allow you further Time for leading for your Witnesses: therefore you are to proceed in your Defence. I am likewise to acquaint you, that in respect to the Lords of your Voice, the Lords have ordered a Bill to be presented by you (after he is sworn) to report truly to their Lordships what you say during your Trial.

Is it your Lordships Pleasure that one of your Lordships Clerks be appointed to stand by and report to your Lordships?

Lords. Yes, yes.

A Clerk was sworn to make true Report; but my Lord Wintour began to speak to your Lordships, as before any could rise.

Sir J. Topham. My Lords, I perceive it is your Lordships Pleasure to indulge the Lord at the Bar, to have a Person sworn to report truly to your Lordships what he shall say in his Defence; but it is not your Lordships Intention that the Lord at the Bar should speak so low, as it is impossible for us or any near him to hear what he says.

L. H. Steward. My Lord Wintour, Speak as loud as you can, so as the Managers may hear; he is only to help your Voice, so as at their Lordships may hear.

Clerk from L. Wintour. I think it very hard, and great Injustice, that I should not be allowed Time to make my own Defence; and that my Witnesses should not come up; and that I should be tied down to a foolish Form, which I am not accustomed to, when I am in danger of my Life.

[*Thus the House was adjourned to the Chamber of Parliament.*]

Friday, March 16. The Second Day.

L. H. Steward. THE House is resumed. Do your Lordships give the Judges leave to be covered?

Lords. Ay, ay.

Proclamation made for Silence, and another to bring forth the Prisoner, as usual.

[*The Prisoner brought to the Bar, and seated.*]

L. H. Steward. My Lord Wintour, you may rise.—My Lord Wintour, you may proceed upon your Defence.

[*The Clerk ordered to report as before.*]

L. H. Steward. I again remind your Lordship, you are to speak in your Defence as loud as you can; if your Voice is not heard, he is ready to repeat to the Lords what you say; but you must speak as loud as you can.

Clerk from L. Wintour. My Counsel is ready here to speak for me.

L. H. Steward. My Lord, I would not presume to make an Answer, but that it is known Law, that undoubtedly your Lordship cannot have Counsel by the Law of the Land, to speak in your Defence, unless it be to Matter of Law; for the Law supplies every Man sufficient to answer for himself as to Matter of Fact.

Clerk from L. Wintour. My Lords, I am not accustomed to speak on such Occasions; therefore I hope your Lordships will allow my Counsel to speak for me.

L. H. Steward. My Lord, I must acquaint you, that the Law is in this Case strict in no Exception, but holds to the general Rule.

Clerk from L. Wintour. My Lords, I don't understand the Law; I am perfectly a Stranger to the Customs of the House, therefore hope your Lordships will allow my Counsel that know them to speak for me.

L. H. Steward to the Clerk. You let your Voice fall.

Clerk from L. Wintour. I am not accustomed to the Practice of this House; therefore I desire that your Lordships would please to allow other People to speak for me that understand them.

L. H. Steward. My Lord Wintour, your Counsel are not to be allowed to speak for you, as to those Things that are Matter of Fact, in an Impeachment of High-Treason, but to what is Matter of Law; and I believe if you sit your own Counsel they will tell you, as the Law stands, they cannot be heard for you here as to Matter of Fact.

Clerk from L. Wintour. The Counsel will inform your Lordships of the Matter of Law, and they know how better to express it than I do.

L. H. Steward. My Lord Wintour, have you any Witnesses to call in your Defence?

Clerk from L. Wintour. I told your Lordships Yesterday, my most material Witnesses were not yet come up.

L. H. Steward. My Lord, I acquainted your Lordship Yesterday, and now would remind you of your own Petition exhibited to the House of Lords, wherein you acknowledged that a great many of your Witnesses were come up, those Witnesses were arrived, you only then pretended Four were not yet come. Both your Lordship design to make no manner of use of those great Numbers of Witnesses that you admitted were come?

Clerk from L. Wintour. Without that they would not be of such an Effect—they would serve for nothing without those Witnesses coming.

L. H. Steward. My Lord Wintour, your Lordship will please to observe the Lords wait with great Patience, to see if your Lordship would be better advised, and go into your Defence.

Clerk from L. Wintour. I don't really know, my Lords, what to say for it, for I don't understand the Proceedings of this House. It was always the Custom as my Court where I was, for People to be allowed to speak,











the Lives of these many brave  
of the Robs were murder'd,  
blood demands the Justice  
and the Commons a  
the Public safety also re-  
the principal Offens-  
but so prevent any future In-  
and Tranquillity of the  
Kingdom, and secure to the Nation perfect happy Establish-  
ment.

So by your Lordships Consent the Speaker of the House of Commons  
have a Power to send to any Lordship, but desire your Lordships  
Opinion on this Matter.

[Then the House of Commons returned to the Chamber of Parlia-  
ment, and the Speaker, on being returned, and Proclamation made for Silence as usual.]

Then the Lord High Treasurer, being seated on the Chair, placed as  
before-mentioned, and beginning with the youngest  
Peer, said,

Thomas Lord Parker, who is your Lordship, is *George Earl of Win-  
toun* Guilty of the High-Treason wherein he stands impeached, or not  
Guilty?

Then *Thomas Lord Parker* standing up in his Place, and laying his  
Right Hand on his Breast, said, *Guilty upon my Honour.*  
In like manner, the several Lords aforementioned, being all that were  
present, answered as follows:

*Richard Lord Gifford,* Guilty upon my Honour.

*Henry Lord Carlisle,* Guilty upon my Honour.

*Benet Lord Harborough,* Guilty upon my Honour.

*James Lord Somersford,* Guilty upon my Honour.

*Robert Lord Bingley,* Guilty upon my Honour.

*Allen Lord Barkley,* Guilty upon my Honour.

*Thomas Lord Mowbray,* Guilty upon my Honour.

*Charles Lord Boyle,* Guilty upon my Honour.

*Simon Lord Harcourt,* Guilty upon my Honour.

*John Lord Belhaven,* Guilty upon my Honour.

*William Lord Ryle,* Guilty upon my Honour.

*John Lord Gower,* Guilty upon my Honour.

*Marquis Lord Hertford,* Guilty upon my Honour.

*Henry Lord Herbert,* Guilty upon my Honour.

*John Lord Ashurst,* Guilty upon my Honour.

*Francis Lord Gifford,* Guilty upon my Honour.

*Richard Lord Linsley,* Guilty upon my Honour.

*Perceval Lord O'Brien,* Guilty upon my Honour.

*Charles Lord Grenville,* Guilty upon my Honour.

*John Lord Colclough,* Guilty upon my Honour.

*Charles Lord Boscawen,* Guilty upon my Honour.

*William Lord Boscawen,* Guilty upon my Honour.

*James Lord Cavendish,* Guilty upon my Honour.

*William Lord St. John,* Guilty upon my Honour.

*Thomas Lord Howard,* Guilty upon my Honour.

*Charles Lord Fitzmaurice,* Guilty upon my Honour.

*John Lord Delamere,* Guilty upon my Honour.

*Perceval Lord Willoughby, of Eresby,* Guilty upon my Honour.

*Henry Lord Viscount Talbot,* Guilty upon my Honour.

*Henry Lord Viscount Langdale,* Guilty upon my Honour.

*John Lord Viscount Lonsdale,* Guilty upon my Honour.

*Charles Lord Viscount Townshend,* Guilty upon my Honour.

*Lawrence Lord Viscount Grey and Selkirk,* Guilty upon my Honour.

*George Earl of Halifax,* Guilty upon my Honour.

*John Earl of Blyth,* Guilty upon my Honour.

*Hennessy Earl of Aylesford,* Guilty upon my Honour.

*Charles Earl of Teckworth,* Guilty upon my Honour.

*Levon Earl of Rushington,* Guilty upon my Honour.

*James Earl of Cornwall,* Guilty upon my Honour.

*Thomas Earl of Strafford,* Guilty upon my Honour.

*Archibald Earl of Argyll,* Guilty upon my Honour.

*Henry Earl of Dolven,* Guilty upon my Honour.

*Hyde Earl of London,* Guilty upon my Honour.

*Thomas Earl of Haddington,* Guilty upon my Honour.

*John Earl of Rother,* Guilty upon my Honour.

*High Earl of Chesham,* Guilty upon my Honour.

*Francis Earl of Galloway,* Guilty upon my Honour.

*John Earl of Pains,* Guilty upon my Honour.

*John Earl of Grenville,* Guilty upon my Honour.

*Henry Earl of Grosvenor,* Guilty upon my Honour.

*William Earl of Jersey,* Guilty upon my Honour.

*Edward Earl of Oxford,* Guilty upon my Honour.

*George Earl of Warrington,* Guilty upon my Honour.

*Richard Earl of Sutherland,* Guilty upon my Honour.

*Henry Earl of Portland,* Guilty upon my Honour.

*Robert Earl of Haldensay,* Guilty upon my Honour.

*Henry Earl of Roxburgh,* Guilty upon my Honour.

*David Earl of Nottingham,* Guilty upon my Honour.

*Charles Earl of Radnor,* Guilty upon my Honour.

*Richard Earl of Barmingham,* Guilty upon my Honour.

*Arthur Earl of Argyll,* Guilty upon my Honour.

*Edward Earl of Clarendon,* Guilty upon my Honour.

*Thomas Earl of Eversford,* Guilty upon my Honour.

*Charles Earl of Mansfield,* Guilty upon my Honour.

*George Earl of Northampton,* Guilty upon my Honour.

*John Earl of Loughborough,* Guilty upon my Honour.

*James Earl of Bridgewater,* Guilty upon my Honour.

*Levon Earl of Devon and Aylesford,* Guilty upon my Honour.

*Henry Earl of Lincoln,* Guilty upon my Honour.

*Thomas Earl of Pembroke,* Guilty upon my Honour.

*James Earl of Derby,* Guilty upon my Honour.

*William Marquis of Anandale,* Guilty upon my Honour.

*Thomas Duke of Newcastle,* Guilty upon my Honour.

*Charles Duke of Kingston,* Guilty upon my Honour.

*Robert Duke of Argyll and Sutherland,* Guilty upon my Honour.

*Charles Duke of Devon,* Guilty upon my Honour.

*John Duke of Rutland,* Guilty upon my Honour.

*James Duke of Athol,* Guilty upon my Honour.

*John Duke of Montagu,* Guilty upon my Honour.

*Henry Duke of Devonshire and Somerset,* Guilty upon my Honour.

*John Duke of Marlborough,* Guilty upon my Honour.

*Charles Duke of Devonshire,* Guilty upon my Honour.

*Charles Duke of St. Asaph,* Guilty upon my Honour.

*Charles Duke of Argyll,* Guilty upon my Honour.

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And taking the foregoing Reasons are properly to be referred to in the

Then as the case is, it is to be hoped, of a certain Day when the Treason was committed, and a material Part of the Case of an Indictment, with great advantage, it is to be said in the Case of an Indictment.

It is not plain, that as the Case of an Indictment, a certain Day ought to be laid in the Treason was committed.

It will, I believe, hardly be denied, that in Case of an Indictment for Treason, it would be ill, if there laid, that the Party indicted committed the Treason *as or about the first of September, 1715.*

It would be apparently worse, if there laid in an Indictment, that the Party committed the Treason *as or about the Month of September, 1715.* It would be still worse, because more uncertain, if it were laid in an Indictment, that the Party committed the Treason *as or about the Month of September, October or November, 1715.*

And, with great Submission, this, is I humbly take it, is the very Case before your Lordships; I mean, taking it, that Impenetrable and Indiscoverable, as to the material Parts of them, are to be regulated by the same Rule of Law, as I humbly conceive they ought to be.

That the certain Day, for the committing the Treason, ought to be laid in Case of Indictments for Treason, seems to be possible, not only from the constant Practice of laying a Day certain in all Indictments of Treason; but from the Reason of the Law, which shews it to be a substantial and material Part of the Indictment.

That the constant Practice, in Case of Indictments for Treason, is to lay the Day, on which the Treason is supposed to be done, well, as I presume, will be admitted.

And such constant Practice is, of itself, a strong Argument that the Law requires it.

But I humbly take it, that the Reason of the Thing argues still much stronger for me, and shews it to be an *essential* Part of the Indictment.

The Reason of mentioning a Day certain in the Indictment when the Treason is supposed to have been committed, is in three Respects, as to the Benefit of the Crown itself, and in some Respects for the Advantage of the Party indicted.

It concerns the Crown, in respect of the Forfeitures accruing to the King, of the Lands of the Party indicted, for where an Attender enters upon an Indictment for Treason, the Lands of the Party indicted are forfeited to the Crown, not only from the Judgment, but from the Day mentioned in the Indictment when the Treason is charged to have been committed.

This is expressly laid, in the Lord Coke's *1. Inst. 3. c. 3. s. 3. p. 390. b.* and the Differences there taken in, between a Writ of Appeal and an Indictment. "In the first, That if a Man be indicted for a capital Offence and *en-law'd* upon it, the Land of the Party is forfeited from the Day laid in the indictment, for the committing of the Treason, as other capital Crimes, but in the Case of an Outlawry upon a Writ of Appeal, because no Day is mentioned in the Writ, the Forfeiture is only from the Judgment."

And tho' in the Case of a Writ of Appeal, which is called in *Latin* (*Recess*) from its brevity, no Day is mentioned, yet is the Declaration upon the Appeal (which resembles an Indictment) necessary not only to mention the Day, but even the Hour when the Murder or Felony was committed.

In the Case of *Bill's* Appeal, which was adjudg'd in the Court of King's Bench, in the Year of King William and Queen Mary, in 20 April after his death, an Appeal upon a capital Offence, the Appeal that was too uncertain, as to the Material was laid to be done, *once or twice previous to the execution*, and that the time of the Hour was made sufficient upon that; but this, tho' true, seems hardly necessary, and is held that *once previous to, or near the execution*. *Lawyer*, was well enough.

How, I say, is it humbly apprehend, ever doubted, but that laying in the Declaration upon the Appeal, is necessary both in the Case of an Indictment, and in a Declaration upon an Appeal, and that as to the Law of the Party indicted, the Forfeiture relates to the Day mentioned in the Indictment.

But if the Question were ask'd in the present Case, from what Day the real Estate of this unhappy Lord should be forfeited if it would, as I humbly apprehend, is difficult to answer it.

And that Difficulty arises from the Uncertainty of the Impenetrable, as to the Time when the Fact was committed.

If then, the bringing in Indictment the certain Day when the Treason was committed, is to be the first in the Case of the Crown, as it fairly does;

It is much to the King, in the Forfeiture of the Lands from the Day laid in the indictment, as from the Authorities I have mentioned it appears to do.

If the Matter concerns that great Privilege and Flower of the Crown, and its Right to Forfeitures;

Then need not a slight omission by no means be called a slight Omission, or a Fault in Point of Law.

It will still have its Weight with your Lordships, That the mentioning a Day certain in the Indictment, when the Crime is laid to have been done, is likewise for the Benefit of the Party indicted. 'Tis for his Advantage, to know the Time when he is charged to have committed the Offence, so by that he will be the better enabled to defend himself against the Accusation.

It is an known Rule in Law, that in all Cases of Indictments, (though for Misdemeanors only) they ought to be strictly certain.

This Rule holds, even in Cases of Indictments for capital Offences; And still, a further, in Cases of Indictments for High-Treason, where, for Example sake, the Judgment, though just, is as terrible as can well be thought of.

My Lords, I am sensible I ought to have now put a Value for your Lordships' Time, in mention of these several Cases in the Law-Books, which justify the known Rule in the Law that requires Certainty in Cases of Indictments.

I shall only beg leave to mention to your Lordships one Case, which is an Authority of your Lordships, upon a Writ of Habeas before your Lordships, which shews how strict the Law is in the pointing of Indictments

for Treason; and that it requires that even what seems to be Matter of Form only in such Indictments must be complied with. It is the Case of the King against Trefson, which was in the fifth Year of King William and Queen Mary, and is reported in *Seymour's Reports*, 3. Rep. 329. where Trefson was indicted for Treason, and in the Conclusion of the Indictment it was laid to be *contra allegantibus delictum*, and upon this Indictment Trefson was attainted, and his Lands forfeited to the Crown, and afterwards purchas'd under the Attainder; but afterwards this Attainder was reversed in a Writ of Error in the King's Bench upon very great Dubious, for want of those Words in the Indictment, *contra allegantibus delictum*, and upon a Writ of Error before your Lordships the Judgment of Reversal was affirmed, by which means a Petition under the Attainder laid the Effusion.

With Submission, this Case is much stronger than the principal Case now before your Lordships.

In that Case it might with forming Reason be objected, that the Word (*Præsumitur*) which is always in the Body of every Indictment, shews, and necessarily implies, that the Treason committed was against the Party's Allegiance, for *how could it be Præsumitur?*

Also in that Case the Treason is set forth at large in the Indictment, together with the Oath-Aid, which demonstrates that the doing this must be against the Party's Allegiance.

But all this would not avail, in the Indictment, in regard Indictments for Treason were always laid to be against the Party's Allegiance.

And if the constant Form of Indictments be an Argument,

"That as strong a case for us in the present Case; for I believe there never was an Indictment without mentioning the Day when the Fact was committed."

Neither, with Submission, in this Matter of Form only, but in the substantial Part of the Indictment, in regard in this Point the King is interested in respect of the Forfeiture, and the Party in respect of his Defence.

It will, I humbly presume, hardly be expected from us, that we should discuss the Points of Impenetrable, especially, if 'twere known, what few Hours Notice we had of attending your Lordships in Arrert of Judgment.

However, I will beg leave to mention one Case of an Impenetrable fresh in your Lordships' Memory, Dr. *Sadler's* Case.

Dr. Sadler was in prison before your Lordships by the Honorable House of Commons, for seditious Expressions in two Sermons, the one preach'd at Dorset House, and the other at St. Paul's, London, and in that Impenetrable the precise Days are laid when the Doctor preach'd each of these two Sermons.

And I humbly take it, that by a like Reason a certain Day ought to be laid in the Impenetrable, where this Treason was committed; and that the Authority of Dr. Sadler's Case seems so much stronger, than this present Case in question, as the Crime of Treason is higher than that of a Misdemeanor.

My Lords, I have nothing else to say on behalf of this unhappy Lord; unhappy, as being in that doubtful State of Memory, not inquisitive enough to be within the Protection of the Law, nor in the same time *fast enough* to do himself in any respect the least Service whatever.

[*Here the Members gave some Interruption to the Counsel.*]

L. H. *Seward*, Mr. *Widdow*, I apprehend the Reason why the Managers of the House of Commons appear usually with you, is, that you are going into a Matter of Fact, and which you have not leave to speak to; you must therefore content yourself to the Point of Law that was stated.

Mr. *Widdow*, My Lords, I shall take up no more of your Lordships' Time; but humbly hope that the Cases of Indictments are parallel with those of Impenetrables;

That, as in an Indictment for Treason, the want of laying a Day when the Treason is charged to have been committed, is a manifest Error;

That as the constant Form of Indictments is so,

That as the Reason of the Law requires they should be so;

So for want of the Certainty in this Impenetrable, we with great Submission must think that the Impenetrable is defective.

And therefore pray that the Judgment against this unfortunate Lord may be reversed.

Mr. *Widdow*, MY Lords, the Commons have attended to the Objection made by the Counsel on the Part and Behalf

of the Noble Lord at the Bar, and they humbly conceive those learned Gentlemen seem to forget as what Court they are. They have taken up so much of your Lordships' time in quelling of Authorities and citing Arguments to them your Lordships that would show an Indictment in the Courts below, that they seem to forget they are now in a Court of Parliament, and on an Impenetrable of the Commons of Great-Britain.

For should the Commons admit all that they have offered, it will not follow that the Impenetrable of the Commons is insufficient; and I must observe to your Lordships, that neither of the learned Gentlemen have offered to produce one Instance relating to an Impenetrable, I mean, to shew that ever the Sufficiency of an Impenetrable was called in question from the Generality of the Charge, or that any Instance of that Nature was used in before.

The Commons don't conceive, that if this Impenetrable would stand an Indictment, it would therefore make this Impenetrable insufficient; nor do they think it necessary, as Justice to the Noble Lord at the Bar, that a certain Day should be mentioned in the Impenetrable.

They don't think, from the Nature of this Crime, and the Evidence that has been given, that there can be any Hardship for want of fixing a certain Day on which the Treason was committed. What he is charged with, is being concerned in a small numerous Rebellion. This Treason mentioned in the Impenetrable is the Month of September, October, and November, and particularly the Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Days of November. He is charged with being concerned from the Time that he left his own House, to the Time he was taken at *Proby*; and it hath been proved, I believe, in a more ample Manner than ever any Crime of the like Nature hath been, And how can this Noble Lord suffer because no particular Day is mentioned, after he continues in Rebellion for so many Days and Months, and marched through so many Counties? It is impossible to conceive he can suffer from any Uncertainty in the Charge, or not having a particular Day fixed.



But, my Lords, the Commons think themselves sufficiently justified, and their Impachment supported by a Precedent long in use. And, the 1st of my Lord Stafford, who was tried by High-Treason, and was executed on the 10th of May, 1672. And I observe that he had a Counsel, and a Plea, and a Trial, and a Verdict, and a Judgment, and a Sentence, and a Execution, and a Burial. And I observe that he was tried by High-Treason, and was executed on the 10th of May, 1672. And I observe that he had a Counsel, and a Plea, and a Trial, and a Verdict, and a Judgment, and a Sentence, and a Execution, and a Burial. And I observe that he was tried by High-Treason, and was executed on the 10th of May, 1672. And I observe that he had a Counsel, and a Plea, and a Trial, and a Verdict, and a Judgment, and a Sentence, and a Execution, and a Burial.

My Lords, the Counsel for the Prisoner have made two Objections, as I apprehend, in Point of Law, which I would give a short Answer to, without taking notice of the other. The first is, that it is not certain Day charged in the Impachment, when the Treason was committed.

The second is, That as to the Form of the Overt-Acts there is, no Time mentioned at all.

I would follow the Steps of the learned Gentleman who spoke before me, and I think has given a good Answer to these Objections: I would take notice, that we are upon an Impachment, and not upon an Indictment. The Courts below have in Point of Jurisdiction, which have prevailed for a long Course of Time, and there, it became the Form by which those Courts use to govern themselves; but it never was thought, that the Form of those Courts had any Influence on the Proceedings of Parliament. In Right of the Second's Time it is said in the Records or Parliament, That Proceedings in Parliament are not to be governed by the Form of *Writs*.

I beg leave to take notice, in Answer to this Objection, That tho' it is the usual Form in the Courts below to allege a certain Day on which the Crime (the fact) to be committed, yet at the same time they add (and it is in every Day and Times) and the Day which it is said, is only for Form sake; but that Day is material, that it may be proved to prove the Crime committed on that Day; but they may prove the Defendant Guilty at any Time, either before or after the Day laid in the Indictment. There has been produced, by the Honorable Gentleman who spoke before, a Precedent in Parliament much stronger than this Case, it is the Case of the Lord Stafford, there is not so much Certainty as there is in this Impachment. Here it is said, That on or about the Month of September, October, or November, or on or about one of them, the Crime charged in the Impachment were committed; but all that is said in my Lord Stafford's Case is, That there had been for many Years then laid out a damnable Conspiracy carried on; and when they came to charge the said Lord with particular Facts, then it is not Time mentioned at all.

One of the Gentlemen cited another Case in Parliament, which was *Dr. Sacheverell's Case*: There it is said that an Exception taken to the Impachment for Uncertainty; and it was said and argued from the Form of the Courts in *Writs*, that where Indictments were for Words spoken or writ, the Words must be laid as they were spoke or wrote, and the Opinion of the Judges was, that it was necessary according to the Form of the Courts below, but it was refused to be otherwise in the Court of Parliament, and they were not bound by their own Forms; so that upon this Head we approach we are clear of the Form of Law in the Courts below, and that they are of no Use, since, if a certain Day is laid, they are not bound to prove the Crime committed on that Day, but may prove it upon any other Day.

The second Objection is, That there is no Time laid for some of the Overt-Acts.

I think there is a certain Day charged when one of them was done, the taking of *Protest*; and in the inferior Courts it has been held, that it is not necessary there should be a Day and Place alleged for every Overt-Act.

We think this Objection has no Weight at all, and therefore would not spend more of your Lordships Time in it, we are in the Case of an Impachment, and as the Court of Parliament. Your Lordships have already given Judgment against the plea upon this Impachment, and it is warranted by the Precedents in Parliament, therefore we think that the Articles are good in Substance, and according to the Forms of Parliament.

My Lords, the Counsel for the Prisoner, and upon which his Counsel have argued, in this, That the Time of the Treason committed is not laid in the Impachment with sufficient Certainty. The Counsel have acquainted your Lordships with the Practice of inferior Courts, and have insisted too much upon the Precedents of *Trespases* and other Crimes for such in Indictments, considering the Question arises upon the Usage and Practice of the High-Court of Parliament; and they cannot but know that the Usage of Parliament are Part of the Laws of the Land, since they differ at many Instances from the Common Law, as *Præsumptions* in the inferior Courts, in Point of Form.

My Lords, if the Commons, in preparing Articles of Impachment, should govern themselves by Precedents of Indictments, in my humble Opinion they would depart from the ancient, say, the constant Usage and Practice of Parliament.

It is well known that the Form of an Impachment has very little Relevance to that of an Indictment; and I believe the Commons will endeavour to preserve the Difference, by adhering to their own Precedents.

One of the learned Gentlemen has said, that he had not Time to finish Parliamentary Proceedings. That Gentlemen's Motion was made, and it is not to be a Charge, but when he has more leisure, I believe it will be made one of the Articles, when, in the case of an Impachment of High-Treason, there shall be laid out a certain Day or Time laid when the Treason was committed. The Free and that such has been a great deal of my Lord Stafford is directly answered. There your Lordships will find it said, that for many Years laid out (but has been continued and carried on by Papists a traitorous and damnable Conspiracy. And afterwards, when it comes to charge the Treason and Overt-Acts, it alleges *every day* and commenced within the Time *alleged*. And as we don't find any Execution was taken for want of Certainty, although not so much as a Year was laid with Certainty, within which the Treason was committed.

In the Case of my Lord Stafford the Commons have charged, that he was Lordship, together with James Earl of Derwentwater, and several others, as *Ables*, Traitors to his Majesty, did, in or about the Month of September, October, or November, 1715, traitorously conspire and compass the Death of the King: That he Lordship and the rest, to accomplish their said traitorous Purpose, did, in or about the said Month, or about the said Time conspire and agree to lay War within this Kingdom, in order to depose and murder his Majesty: That he Lordship did, within the time aforesaid, traitorously lay a War and Robbery in the Bowens of this Kingdom; and that he, together with his Associates and Abettors, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of November aforesaid, traitorously take and possess in the Town of *Stirling*, and did then and there cause and procure to be killed and killed and Murder of many of his Majesty's subjects, &c. So that, my Lords, here is a Charge, it is said, that he, but of the Month and Days, and the Treason committed by the Prisoner, with Submission, not only charged with Certainty as to the Point of Time, but also charged with a great deal more Certainty than was necessary, in a Case where his Lordship's Treason began at *divers* Hours, and continued from thence till the Surrender at *Perth*.

Surely there is not the least Weight in the Prisoner's Objection, for even in the Case of an Indictment, though it is necessary to lay a Day, yet it is not necessary to prove the Treason to be done upon that Day. So that even in inferior Courts it is an immaterial Form. One would think, if it be necessary to allege, a Day certain, it should be necessary also to prove the Treason to be done upon that Day, so that it is a requisite to prove the Treason upon the Day, whether in fact or Jurisdiction it is a rather a Form than Substance. The Courts in Wales, to be true, have their Terms, many Terms for which no Reason can be given, but I believe in Parliamentary Proceedings, nothing is necessary that is material.

My Lords, my humble approach to the Exception taken in Article of Judgment, has no Foundation in Law or Reason.

As to the Law, we must refer to the Forms of Proceedings in the Court of Parliament, which is the Law of Parliament, and which must be bound to be Part of the Law of the Land. It has been often said already in your Lordships, that the Proceedings in Impachment are not to be governed by the Form as in the inferior Courts, and we presume your Lordships will be governed by the Forms of your own Court, (especially Forms that are not essential to Justice) as the Courts below are by theirs, which Courts differ one from the other in many Respects as to their Forms of Proceedings, and the Practice of each Court is deemed to be Part of the Law of that Court.

As to the Resolves alleged to support the Exception, they will receive a plain Answer.

To find, that 'tis necessary to allege a certain Day is an Impachment when the Fact was committed, and that the Defendant may be able to make his Defence, that he may produce Witnesses to give an Account where he was at the time he is accused to have been guilty. And one of the learned Counsel has pleaded to say, that this is requisite in Indictment for the Civil Officers, and ought to be much more for criminal Cases, and in Impachment for so high a Crime as Treason. My Lords, that Gentlemen knows very well, that the Day which is mentioned in an Indictment is not material to the Purpose of making a Defence as to that Time only, for that the Defendant must come Prepared to give an Account of his Innocence at the Time between the Day alleged and the Indictment found. And in this Case there is no Hardship on the Public Law at the Bar. Here it is, of the Treason alleged to be within the Compass of Five Days, (viz. the taking of *Protest*, giving War, and engaging the King's Troop,) it is said, that a given Account of himself to have been elsewhere at these times, it might have been of Service to him: But that happened, very unfortunately for him, to be otherwise; and your Lordships have found him guilty of those Facts on or about those Five Days: Which but created a second Reason as to be offered to your Lordships, that the Treason alleged is not factually certain (viz.) To what Day shall the Possession of the Defendant's Effie be referred? It is taken the most favourably for the Defendant, the Conviction shall operate so as to make the Foreclosure only from the last of these Days, and I don't apprehend any other Inconvenience. But to infer, that that Reason no Judgment at all shall be given upon this Conviction, where the material, the substantial Part of the Issue is found, seems not to be right Consequence.

My Lords, we conceive for these Reasons, and what has been mentioned before, that Exception has no Weight at all, and hope your Lordships will overrule it.

L. H. Steward. Gentlemen of the House of Commons, I suppose you don't oppose the Counsel's replying to you; afterwards, if you have any thing to offer you may be heard to it.

Mr. Gen. My Lords, we don't chide to it, if the Commons have the Liberty of speaking afterwards and closing, which they will upon at their Right.

L. H. Steward. Gentlemen, you may reply.

Sir C. Pepys. Is it your Lordships Pleasure that we reply?

L. H. Steward. You may reply.















Goods or Chattels, Lands or Tenements, he shall be a Traitor of the High-Treason committed against the King. If you find him Not Guilty, you are to release him whether he be a Traitor or not; but if you are to enquire of his Goods and Tenements, as if you had found him guilty. If you find him not guilty, you shall be obliged for it, you are to lay by, and no more; and these your Evidence.

Mr. Gwyn, Jan. MAY it please your Lordship, and you Gentlemen that are sworn: The Prisoners at the Bar, *Francis Thomas*, stands indicted of High-Treason, in attempting to seduce and subvert the Government of these Realms, happily established under his Majesty King GEORGE I. to depose his Majesty, to bring him to Death, and to place the Crown upon his Throne.

The Indictment is such, that for this Purpose the Prisoner, the First of September, of the second Year of the Reign of his present Majesty, and at several other Days and Times, at London in your Country, traitorously conspired, attempted, and did attempt, to kill his most Sacred Majesty, and to place the Crown upon his Throne.

And to do this, he did actually performing such his Intentions, he did actually, by his own means, with several other Traitors, to raise Rebellion and War in these Kingdoms, against his Majesty, and in favour of the Pretender. And that he did perform them, Arms and Ammunition, were sent from France to him in France, to assist him in that Rebellion. And that he did perform them, he was written several Letters, containing the Instructions, and expiring the Assistance of such Foreigners and others.

The Evidence in charges further, that he wrote and composed such Letters, and that he was to receive and compound, and procured them to be sent and delivered to the Pretender. And this, Gentlemen, is laid to have been by him done, contrary to the Duty of his Allegiance, against the Peace and good Sovereignty, Lord the King, his Crown and Dignity, and against the Form of the Statute in that behalf provided.

Gentlemen, in the indictment the Defendant has denied that he is Not Guilty. Upon building our Evidence for the Jury, we shall prove this Case upon you, it will become your Duty to find him guilty of the Charge.

Mr. J. Topham. MAY it please your Lordship, and you Gentlemen of the Jury, I am of Counsel with his Majesty: And against the prisoner at the Bar, and the Nature of the Evidence we shall endeavour to prove this Charge.

The Prisoner stands indicted of the first Species of High-Treason, mentioned in that Statute, chapter 25. edit. III. that is, conspiring and imagining the Death of the King.

The Over-Act, alleged in the Indictment, to manifest that traitorous Design of the Prisoner, are three:

He is charged with conspiring and confpiring, with other Traitors, to levy War against the King, in favour of the Pretender to his Majesty's Crown.

With conspiring and agreeing to solicit and procure Assistance, from Foreigners, and others in France, to carry on that War.

And further, with writing traitorous letters, notifying his and his Accomplices, Relations to levy that War; and requiring the before-mentioned Assistance; and sending those Letters into foreign Parts for that Purpose.

The before-mentioned Over-Acts of the High-Treason charged upon him.

To make good this Charge, we shall shew, that about three or four Years last, there was a Criminal offence between the Prisoner and Abbot Butler, an Ecclesiastic of Convent. That Correspondence began on the October of last Year, but in August, wherein one Mr. Butler, a Relation of the Abbot, was concerned, which was recommended to the Prisoner's Care. But soon there after (as Gentlemen, whose Name it will be necessary to mention in the Prosecution of this Cause) Mr. Harvey of Convent, took upon him to make use of that Correspondence, in order to transmit and receive Letters to and from that Abbot; and also to the Duke D'Armen, by the means of the Prisoner.

Mr. Harvey, at that time, made use of the Prisoner only to convey those Letters forward and backward, under the Prisoner's Cover, directed to one D'Armen, alias Pagan, who had married a near Relation of the late Duke of G. and, to be communicated by D'Armen to the Abbot, or the Duke D'Armen. But it seems, the Prisoner having gained a Knowledge of the Tendency of Mr. Harvey's Correspondence, (which was treacherable) he himself soon after came to partake of the Guilt.

As it was at first a Correspondence, between the Prisoner and the Abbot, and afterwards between Mr. Harvey and the Abbot, under Covers, I am to shew, that Mr. Harvey made use of the Prisoner himself, to correspond with D'Armen. And in those Letters you will find, that the Prisoner does not enter into the Correspondence as a Matter that he was transacting only for Mr. Harvey, but shews a great Concern in it himself. He is solicitous for Assistance to use his Relation from France; Imparting to his Country, and Abbot, for the Success of the Cause.

The Evidence we shall offer to you, to shew that this Correspondence was carried on, will be this.

Informations being given to a Noble Lord, (then Secretary of State) of a considerable Correspondence, being carried on by Mr. Harvey, by means of the Prisoner, then, was a Warrant issued to take the Prisoner, and seize his Papers. And upon the Execution of that Warrant, Letters directed to the Prisoner, and his Copy Book of the Letters wrote by himself, and an Original Letter of Mr. Harvey's, were found in the Prisoner's Custody, and will be produced to you; and these were owned and read by the Prisoner.

The Letters themselves plainly speak the Nature and traitorous Effect of this Correspondence, as begun by Mr. Harvey, and carried on with the participation of the Prisoner. And, Gentlemen, my Lords the Judges will tell you, that it is not counselling such a Correspondence in the Case of a Lord-Suit, (as in the present Case) or otherwise, that will form an Offence from Public Justice, in case a traitorous Correspondence can be made manifest. If that would evade the Justice of the Law, it would be impossible for Traitors to be brought to Punishment. But that which

puts this out of all doubt, is, that the State which is put on these Letters by us, and by the Indictment; that is, a Conspiracy, or Confection, has been put upon them by the Prisoner himself. For we shall lay before you the Examination of the Prisoner before the Secretary of State. In that he admits, that the Subject-Matter of the Letters wrote by D'Armen to him, to be communicated to Mr. Harvey, was the Design of the Pretender's invading the Dominions of his Majesty. And these Letters bring one Side of the Correspondence, (I mean that which came from Abroad) serves to evince or demonstrate the other Part or Side of the Correspondence, which came from home.

I shall not enter into the Particulars of the Letters or Papers, and shew upon Matters in writing, without bringing them first, and shew, whereby to lay a Foundation for observing upon them. But the Letters will be read to you. And we who are the King's Council, don't desire you to put any force or strain'd Construction upon them. No, we desire you to put on other Construction upon them, than what the Prisoner himself has done already.

I shall say nothing to you, Gentlemen, to aggravate the Nature of the Offence. I rather choose to appeal to your Judgments, than to extort your P. Sentences.

All that is desired of you, is, to give your best Attention to the Evidence; and so do Justice, and discharge your Conscience.

Mr. At. Gen. MAY it please your Lordship, and you the Gentlemen of this Jury, I am of Counsel against the Prisoner at the Bar. The Indictment has been at large opened and explained by Mr. Sergeant Topham. The Prisoner is charged with High-Treason, in conspiring and imagining the Death of his Majesty, in order to sit the Pretender on the Throne. The Over-Acts laid, are conspiring to levy that War and Rebellion that broke out lately, and in attempting to do this, and others in France, for Men and Money for carrying it on.

It is notorious, that Preparations were making many Months for the Rebellion that broke out in Scotland, September, 1745, under the Earl of Arden; and in Northumberland in October after, under Mr. Fergus; and the like were design'd in Oxford, Bath, &c. in October, 1745. And Men were lifted and sent down for those Purposes; as hath appear'd on the Trials of the Persons who have suffer'd for these Treasons.

The Conspiracy was carry'd on with great Secrecy: And tho' it had been long in execution, yet it was not publicly known, till his Majesty (upon the 20th of July 1745) was pleas'd to acquaint his Parliament, that he had a great Number of the Pretender's Design to invade this Kingdom; and that at the same time there were great Preparations here to assist that intended Invasion.

The Defendant lives in Paris-Yard in Peter-Lane, and goes for a Time. When the Duke D'Armen, an Ambassador from the French King, in the Year 1743, was here, the Prisoner came acquainted with the Abbot Butler, a Priest of the Convent of Convent, and from that time he corresponded with him. The Abbot had a Relation of his Name, *Boniface Butler*, who had a Seat at Law depending here, which he recommended to the Care of the Prisoner; and that I believe might be the Beginning of the Correspondence between them. There is a Gentleman that has been moved, Mr. Harvey of Convent; he also then contracted an Acquaintance and Familiarity with the Duke D'Armen, and Abbot Butler, and corresponded with both. These Correspondences first began in the Queen's Time, and appear to have been carried on with great Secrecy and Caution, which induce a Belief they were then Criminal; but I don't mention that, as if what was done in the Queen's Time would affect the Prisoner upon this Indictment, for it was nothing but Treason committed against the King. These Correspondences were carried on, from the going away of the Duke D'Armen, till the Prisoner was seized, which was on October in this Month.

My Lord Townshend, then Secretary of State, was diligent in his Enquiries, and on the 12th of September, 1745, had a private Information given him, that Letters constantly came by the Post from France, to France and Mr. Harvey, from the Duke D'Armen, and Abbot Butler, and one Pagan alias D'Armen of Convent; and that the Subject of the Letters related to the Pretender, and that wanted Invasion.

His Lordship was cautious, and did not immediately seize the Prisoner, but first the coming in of two Posts from France, and gave Orders for stopping all Letters directed to the Prisoner, to see what further Discovery they would make; and having received further Information by those Letters, on the 19th of September, 1745, his Lordship made his Warrant to Topham Esq., one of the Messengers, to apprehend France, and seize his Papers. He having received the Warrant, went, together with *W. B. another Messenger*, (who is since dead) to the Defendant's House, and there seized his Person, and at the same time his Copy-Book of Letters. And it is extraordinary to find therein several of the Copies of any Letters relating to a Matter of this Nature. When they seized that Book, he told them, that there was nothing in it, and that it was only his Copy-Book of his Letters to his Correspondents. They seized also several Original Letters, wrote from France to him by D'Armen alias Pagan, which will be read to you. They then seized also in his Custody an Original Letter of Mr. Harvey's to Abbot Butler, dated January 9, 1744, which was sent to France to be transmitted beyond Sea; but it seems France opened it out of Curiosity, or by Accident, and kept it. It were Figures for Names, and Things, which he will understand. The Prisoner was on September 23, 1745, examined before both Secretaries of State, and the Copy-Book of Letters was shewn him, and he owned it to be his Book, wherein he entered the Letters of his Correspondence, and that the Entries were made by himself or his Son. D'Armen's Letters were also shewn to him, and he owned that they were those that he received, and were found in his Custody.

He at first seemed to be open and ingenuous, and the Secretaries of State then thought him to be so. He told them in particular, when the Correspondence began, how long carried on by covering Mr. Harvey's Letters; and when altered, and the Correspondence carried on only by France; and that the Subject of the Letters were to him by Pagan, was the Design of the Pretender to invade his Majesty's Dominions; and he named Persons, who were intended in them by Initial Letters of their Names











Mr. *Baileys*. My Lord, the Day the Prisoner was seized, I came into Mr. *Walpole's* Room. He told me he had received that Book and these Letters that were seized at the Prisoner's House, and desired me to sit down and read them with him. I did so. Afterwards, when Mr. *Walpole* went to fetch the Dutch Troops, he delivered this Book and these Letters into my Hand. Afterwards, my Lord *Townshend* desired me to look into them, and see which contain'd Passages most Criminal, and to extract such Passages, which I did accordingly, as you see of them. I will look over them again, and then I can tell you whether they are the same.

Prisoner. By what Mark?

Mr. *Baileys*. I can tell you by that which is stronger than any Mark, I copy'd Passages out of several of them.

(*Then he laid down the Letters on his seat.*)

Mr. *Baileys*. I had every one of these Letters from Mr. *Walpole*, and I know it certainly; for that from every one of these I extracted some Passages.

Mr. *Croger*. Was you present at any time when the Prisoner was examin'd?—Mr. *Baileys*. I was.

Mr. *Croger*. Were this Book and these Letters produced to him at the time of his Examination?

Mr. *Baileys*. He was examin'd by my Lord *Townshend* and Mr. Secretary *Stanhope*, and I was call'd in to take his Examination in Writing accordingly I did.

Mr. *Croger*. Were the Book and Letters at the time of his Examination produc'd to him?

Mr. *Baileys*. I can't say that, for I was intent on my Papers, writing the Examination, and looking upon the Prisoner, and hearing what he said. When I had written down what is in my Hand, (*holding out the original Examination*) I read it over to him distinctly and audibly, and he being ask'd whether he was willing to swear to it, and answering, Yes, I call'd him his Oath. And I offer'd him a New Testament to swear on. He said he could not swear on that Book. But he took another Book out of his Pocket, and I swore him on that. I asked him whether this was true? He said it was. Then he sign'd it, and afterwards my Lord *Townshend* sign'd it.

Mr. *Croger*. Is the Subscription of his Hand-writing?

Mr. *Baileys*. It is.

Prisoner. You say I took an Oath. On what Book was it?

Mr. *Baileys*. Indeed I don't know, I believe it was an Hebrew Book; Mr. Secretary *Stanhope* look'd upon it.

Mr. *Daines*. Was he examin'd at any time after?—Mr. *Baileys*. Yes.

Mr. *Daines*. Was you present then?—Mr. *Baileys*. No.

Mr. *Hard*. How long were they in your Custody?

Mr. *Baileys*. From the time that Mr. *Walpole* was abroad, till he came back again, and then I delivered them back to him.

Mr. *Hard*. Were they in your Custody when Mr. *Jones* was under Examination?

Mr. *Baileys*. I can't tell, but I never did shew them to him.

Mr. *Hard*. Were they not deliver'd out on that Occasion?

Mr. *Baileys*. No, they were not deliver'd out by me.

Mr. *Hard*. You say you read the Examination to him. Did not he desire to read it himself?

Mr. *Baileys*. I don't remember it.

Mr. *Hard*. Was he not refus'd to read it?

Mr. *Baileys*. No, upon my Soul.

Mr. *Hard*. Was you with the Prisoner in *Nagsgate*?

Mr. *Baileys*. I was with him at his own Desire, otherwise I had not gone to him.

Mr. *Hard*. Do you remember the Days?—Mr. *Baileys*. No.

Mr. *Hard*. How often was you with him there?—Mr. *Baileys*. Twice.

Mr. *Hard*. Were there any Officers made by you to him?

Mr. *Baileys*. I desire you would explain yourself.

Mr. *Hard*. Did you make him any Offers, that upon his signing any Paper, he should have his Liberty?—Mr. *Baileys*. No.

Mr. *Hard*. Did you not mention to him his giving Evidence against any other Person?

Mr. *Baileys*. No, upon my Soul.

Mr. *Att. Gen.* These Questions ought not to be asked. It is an Intemperance to tamper with any Man; and therefore such Questions ought not to be put. If you have any Witnesses, you may examine them.

Mr. *Hogben*. Then we will examine it.

Prisoner. Is that the Book I swore upon? (*Showing a Book he had in his Hand.*)

Mr. *Baileys*. I don't know indeed, it was such a sort of Book.

Mr. *Att. Gen.* I don't take that to be material, if it were the Hebrew. He had it in his Pocket. But it is not his Oath, but his Confession that is material.

Mr. *Hogben*. Taking the Book into his Hands. I understand a little Hebrew. This is a Book to pray by, not swear by. It is a Collection of some Jewish Prayers and Rituals. I believe taken out of *Maimonides*. Who has best learn'd the learned *Maimonides* in *Pavia*, he is supplying some critical Observations upon the *Explanations*.

Mr. *Hard*. Did you put any Mark on any of these Letters?

Mr. *Baileys*. I did on some of them.

Mr. *Hogben*. Where are the Extracts you made out of them?

Mr. *Baileys*. I have some of them here. (*Showing out four Papers.*)

Mr. *Hogben*. What did you do with the Letters, after you had made these Extracts?

Mr. *Jess. Prov.* He tells you that he kept them till Mr. *Walpole* came back again, and then deliver'd them to him.

Mr. *Baileys*. Here is my Name on some of them. The two initial Letters of my Name.

Prisoner. When was that Mark made upon them?

Mr. *Baileys*. I don't justly remember.

Prisoner. That might be done Yesterday, or since they were deliver'd out of his Custody.

Mr. *Baileys*. I did it while they were in my Possession, and before I deliver'd them back again to Mr. *Walpole*.

(*Then the Lord Townshend rose furrow.*)

Mr. *J. J. J.* We must desire your Lordship to inform the Court, what

your Lordship knows in relation to the Prisoner at the Bar, as he is sitting out the Warrant against him, and what happened afterwards.

Lord *Townshend*. My Lord, having received Information that there was a treasonable Correspondence carried on between the late Duke of Orléans, Duke D'Anjou, *Longueville* and Mr. *Harvey*, in which the Prisoner was concerned, and was the Channel in which the Correspondence was convey'd, and that the Pretence of it was a Law-Suit, but that the Design of it was in Favour of the Pretender; and that when they talk'd of the Party, a Pretender was meant; and that they express'd him to be stout and brave, having reason to rely on this Information, I drew a Warrant to seize the Prisoner and his Papers. I had intend'd before first to stop in London, that came from France directed to France, by which I received Confirmation of the Intelligence which had been before given me. Upon the issuing out the Warrant, the Prisoner was seiz'd, and his Letters were brought to Mr. *Walpole*.

The next Day I sent for the Prisoner to be examin'd, and order'd Mr. *Walpole* to bring me the Papers, and sent for the Prisoner at the Table, and the Book lay by them. I ask'd him whether he knew the Hand, and whether these Letters were not for him? He own'd the Letters, but said he could not help what was in these Letters, and that what others wrote to him could not make him guilty. As for what I have wrote (*said he*) I appeal to my Book. That I am Book, I appeal to that for my Innocency. He did not appear abash'd, and I remain'd him; and at Night I sent for him again, and Mr. Secretary *Stanhope* was with me; I had in that time look'd into more of the Letters, I saw several initial Letters of People's Names. I told him the meaning of them, and he gave me the Account contain'd in this Examination. He seem'd in a Disposition to tell me all he knew, he gave me an Account how this Correspondence began, and how it was carry'd on; and then he came to explain the initial Letters that were in those Letters that were taken upon him, and in several other Letters that I had intercept'd. I remain'd him again that Night, having taken his Examination in my Hand.

A second Examination was taken upon Mr. *Harvey's* Letters; (*which I examin'd, and the Letter therein upon'd a new Name to his Lordship.*)

This is the very Letter which I examin'd him; he own'd it to be now he came to sign the Letter, and not to forward it, and explain'd all these Figures in me very minutely. He protest'd that he knew no more, and made solemn Protestations that he had said all he knew, and I was almost convinc'd he had; but in the Consequence, I had reason to think he had not. But these two Examinations were taken before Court, and I sign'd aforesaid, and the other Mr. Secretary *Stanhope* sign'd with me. As to the First, I believe Mr. Secretary *Stanhope* was gone out of the Room before we sign'd.

Mr. *J. J. J.* I desire to ask your Lordship, whether all the Letters that were brought by Mr. *Walpole* were laid upon the Table at the time of the Prisoner's Examination?

Lord *Townshend*. All that Mr. *Walpole* brought me were laid there, and I saw him take them back again.

Mr. *Hard*. I desire to ask your Lordship, whether you heard that Declaration read over to him?

Lord *Townshend*. I dare say I did.

Mr. *Hard*. Did he not endeavour to excuse himself from signing it, 'till he had read it himself?

Lord *Townshend*. I don't remember that. I don't know that he made any Difficulty of signing it; but I am sure it could not be because he was refus'd to read it.

Prisoner. Was not there any Reluctance in me to sign it?

Lord *Townshend*. What do you mean? Have not I sign'd that already?

Prisoner. Did not you offer me some Money to sign it?

Lord *Townshend*. I hope you can't say a thing of so much Infamy. After he had been examin'd, he complain'd to me of the Misery he was endur'd to, that his Wife and Family must starve, and express'd himself as if he were at a loss for a Supper: I told him he had nothing to hope for, or any room to expect any Favour, but by making a clear Confession. He went on begging, and said that his Wife was starving; I do not certainly know whether it was the very Night that he sign'd his Confession or not; but I am sure it was not for that, but to give him Alms, and because he begg'd to be fed, I put my Hand in my Pocket, and gave him three, four, or five Guineas. I know not that, in charity, and it was what I never could resist any Man that apply'd to me in that manner, and begg'd to be fed. He said his Brother would not look upon him, because he was taken up for High-Treason, and he desired me to give him something in Charity, which I did.

Prisoner. I desire to ask you, whether you ever before on any body else like Charles? Pray, my Lord, name the Men upon your Examination you ever gave five Guineas to before? (*Lift up his hand being a Law, & read the Court.*)

Prisoner. I don't but I sign'd it out of my Life; you did not answer me.

Lord *Ch. Baron*. People your Question to the Court?

Prisoner. I desire to know who he ever gave five Guineas to besides me?

Lord *Ch. Baron*. My Lord says it was out of Charity.

Prisoner. And that he never refus'd any Body under his Examination the Sum of five Guineas?

Lord *Ch. Baron*. He don't say so; he says, he never could refuse his Charity to people that begg'd as you did.

Prisoner. I had less need to beg than some others.

Mr. *Hard*. I have but one Question more to trouble your Lordship with, which my Lord *Townshend* has told me, and that is, whether at the time when this Examination was sign'd by the Prisoner, he was not told of his being for some particular Purposes, but that it should be binding on him?

Lord *Townshend*. He did declare that it might not be made use of against him; I told him that depend'd on his His own say, if he was ingenuously, if he did truthfully and fairly, and declar'd all the Truth, I would do all in my Power that he should have Mercy; I don't know whether it is proper to give my Reasons why I am convinc'd he did not declare candidly; but on the Perusal of the Letters, I found he was not a bare Conveyer of them, or came by Chance to the Knowledge of what he explain'd in them, but that he was wrote to, as

\* Referring to the Original Examination.



one of the Managers : On that I ran to him again, and told him plainly, he must know more of it. He stood it out that he did not, and then I put him to *Negative*: Soon after he was committed, his Wife came, as Mr. *Buckley* informed me, and assured him that she was persuaded, if she could see her Husband, that he could prevail with him to discover the whole. On that I gave Direction to put him into the Mellinger's Hands again, which was done, about a Morning or two after, one *Curtis*, who was at the time Mellinger's House, brought a Letter to the Office, which he had found drop'd by his Man's Bed-side. It was directed to his Wife, and the Subject was to bid her a farewell, for he found better Company in *Newton* than he expected, that the latter half of them were in upon the Government's Account, that he had find nothing of Mr. *Harvey* that could hurt him, nor could he; that the Government had nothing against Mr. *Harvey*, but a general Suspicion that he was against the Government, which was Part in four of the Nation were, and that he himself laugh'd at any such Suspicion. The Government could do against him the Prisoner: When I found this was my State, I could not but think he had not dealt ingenuously. Mr. *Rowland*. I would propose to the Judgment of the Court, whether it might be to give Evidence of the Substance of a Letter without the Name of the Writer.

Mr. *Just. Pratt*. This comes in Answer to Mr. *Ward's* Question. He told my Lord *Trenchard*, whether there was not some Promise that this Confession should be made use of, and the Prisoner? His Lordship gave this Account, and justifies himself, how he came to make use of it, as he said at the Reading.

Mr. *Harvey*. But to give an Account of the Substance of a Letter without producing it, I apprehend, is not according to the Rules of Evidence.

Sir *J. Telfer*. If the Counsel for the Prisoner desire the Letter to be read, it shall be read.

Mr. *Just. Goss*. Do you insist upon the reading of it?

Mr. *Harvey*. If you will read it in the proper time you may.

Mr. *Harvey*. If in the Course of the Evidence the Letter is not read, I don't pick it.

[Then Mr. *Harvey* was call'd up again, and the Letter was shew'd to him.]

Mr. *Just. Goss*. Pray, Sir, will you give an Account what you know of this Letter, and how it came to your Hands?

Mr. *Ward*. This Letter *Curtis* brought to me, and I made this \* Mark on it. He told me it was found in *Pratt's* Chamber next his Bed-side, and this is the Letter.

Mr. *Ward*. There is nothing prov'd yet of its being the Prisoner's Hand, its being found by his Bed-side will not suffice him.

[Then Mr. *Buckley* was call'd up again, and the Letter was shew'd to him.]

Mr. *Just. Goss*. Pray, look upon this Paper, and tell us whose Hand-writing you take it to be?

Mr. *Buckley*. I never did see the Prisoner write but once, and that was upon my being taken to him to take a Confession he seem'd unwilling to make, and then I sat by him while he was writing.

Mr. *Just. Goss*. How long did he write then?

Mr. *Buckley*. About an Hour, and I read it over.

Mr. *Just. Goss*. Do you believe this to be his Hand-writing?

Mr. *Buckley*. I not only saw him write them, but I have read a great deal of his Book, which Mr. *Ward* told me was taken at the Prisoner's House, therefore being used to the writing in this Book, and to what I saw him write, for these Reasons, and no other, I believe this Paper to be his Writing.

Mr. *Dumas*. Are not the Letters of your Name on this Letter?

Mr. *Buckley*. Yes : Which Mr. *Ward* put into my Hands all the Letters, my Lord bid me look out those that were fit to be examined, and I did mark them that were cancelled, and always kept them in my Hands all Mr. *Ward's* return'd, and then I deliver'd them to him : Those Letters that I extracted, I could not; these other Letters were intercepted by my Lord *Trenchard* I did not mark, because they came to me at other times.

Mr. *Dumas*. Do you mark that Letter?—Mr. *Buckley*. Yes.

Mr. *Ward*. Can you be positive that it is the Prisoner's Hand?

Mr. *Buckley*. No.

Mr. *Ward*. Do you rely on the Writing in the Book?

Mr. *Buckley*. By that, and by what I did see him write, from whence it is that I conclude this to be his Hand.

Mr. *Harvey*. He attempts to prove his Hand by two Inducements, one that he saw him write, and the other is the Book; therefore let him sit on those Parts of the Book, that he takes to be the Prisoner's Hand, and to be like this Letter.

L. Ch. Baron. The Book is not material; it is enough for a Man to say, that he saw another write for an Hour together, and then that he believed it to be his Hand.

Mr. *Harvey*. If that was the single Foundation, it was something; but he makes another Foundation also.

Mr. *Just. Pratt*. We are going out of the way, the Question is, Whether this shall be read? In order to that, the Method is to prove, that the Writing is acquainted with the Prisoner's Hand-writing, and believes this to be his Writing. He tells you he saw him write for an Hour. He gives you a further Reason, that it is like some Letters in the Book. If that were laid out of the Case, the other would be sufficient without it.

Mr. *Harvey*. A Man makes two Things the Foundation of his Judgment, he sees him write, and the Similitude of Hands in the Book, the most conclusive Evidence would be, the Similitude of the Hand in the Book, which others may judge of as well as himself.

L. Ch. Baron. That is no Evidence at all; Similitude of Hands is no Evidence.

Mr. *Harvey*. I am far from thinking it is, or that there is yet any Evidence at all. Do you believe this to be his Hand, only from your having seen him write, or from what you have observ'd in the Book also?

Mr. *Buckley*. I say that from his having seen him write, and my having seen the Entries in the Book, I believe that to be his Hand.

Mr. *Just. Pratt*. If you had never seen the Book, but had seen him write for an Hour; could you collect from thence that this was his Hand?

Mr. *Buckley*. No, I would not affirm it.

Mr. *Harvey*. Then it is with us, and makes it necessary to look into the Book.

Mr. *Just. Goss*. How come you to apprehend any one Part of the Book to be *Pratt's* Writing more than the other?

Mr. *Buckley*. By my Eye-sight, and comparing it with this Letter.

Mr. *Just. Goss*. Is it from your Knowledge of seeing him write?

Mr. *Buckley*. Yes, and that Writing being like this Book.

Sir *J. Telfer*. I desire this Matter may be considered as it stands; my Lord *Trenchard* is now making the Confession of the Prisoner, and was asked, whether there was not Hopes of Mercy given him? My Lord said there was, upon his making a frank Discovery; but he tells you the Prisoner was not contented to Mercy, because he had not made such a Discovery, and then gives an Account of this Letter: I thought this should be for the Prisoner's appeal; so that Letter, and would have had it produced to check the Evidence given by my Lord.

Mr. *Just. Pratt*. Since it is gone thus far, I think it would be proper to clear this Matter.

Prisoner. I desire to know where Mr. *Buckley* saw me write for an Hour together?

Mr. *Buckley*. It was in the Mellinger's House.

Mr. *Just. Pratt*. My Lord *Trenchard* was giving an Account in Answer to a Question propos'd by the Prisoner's Counsel, and gave his Reason why he did not think the Prisoner was frank. I did not think so (says he) because of a Letter which was found by his Bed-side. Says Mr. *Harvey*, that this Letter ought to be produced.

Mr. *Harvey*. If the Account is so near that time that my Lord observ'd to upon that I saw, then it is no great Harm in reading it. But I am still to upon your Judgment, whether, upon the Contents of the Letter is inferr'd upon, and negatived, that upon Memory only, the Letter still ought not to be produced?

[Then—Curtis was call'd up.]

Mr. *Just. Goss*. Look upon that Letter, which Hand-writing is it?

Curtis. I believe it is Mr. *Pratt's*.

Mr. *Just. Goss*. Have you ever seen him write?—Curtis. Yes.

Mr. *Just. Goss*. And do you believe it to be his Writing?—Curtis. Yes.

Mr. *Ward*. How long have you been acquainted with the Prisoner?

Curtis. While he was in the Mellinger's House.

Mr. *Ward*. How often did you see him write?

Curtis. Several times.

Mr. *Ward*. Was you as Cudbly at the same time when he was?

Curtis. Yes.

Mr. *Just. Goss*. Where did you find this Letter?

Curtis. In his Chamber, by his Bed-side.

Mr. *Harvey*. I don't hear that he gives an Account, whether he is so well acquainted with his Writing, that he can distinguish it from any others?

Curtis. He told me it was a Letter that he had wrote to his Wife.

Mr. *Just. Goss*. The Letter is in French; we have a Translation of it; we must desire that the Interpreters who translated it may be sworn.

[Then Mr. *Bowyer* and Mr. *Ozell* were call'd up.]

Mr. *Enger*. Did you translate the Letter?

Mr. *Bowyer*. I did, and afterwards I compared it with Mr. *Ozell*.

Mr. *Enger*. Is that a true Translation of the Original Letter?

Mr. *Enger*. I did make a true, genuine Translation of it, allowing for the Difference of Language and Style.

Mr. *Enger*. Was in the best and most exact Translation you was able to make?

Mr. *Enger*. Yes.

Mr. *Enger*. Mr. *Ozell*, have you compared this Translation with the Original?

Mr. *Ozell*. Yes, and I believe it to be a true Translation.

Nice. That the Original Letter was deliver'd into the Prisoner's Hand during the Time that the Translation was reading, and Mr. *First*, who was permitted to stand in the Bar near the Prisoner, assist him in comparing the Original with the Translation. The like Method was observ'd, when the Translations of the Letters received by the Prisoner were read; and when the Letters wrote by him were read out of the Copy-Book, the Copy-Book was shew'd to him.

[Clerk reads.]

\* My Dear,

I ALLE I exhort you to, is to make yourself as easy as you can. I do so, the Government, as well, having first well laid Night; and the Company here is much better than I expected, they are all Tories, and the major Part for the Government, that is fastidious for being so, according to their Informations. Although all should fall, and my Lord *Trenchard* should do nothing, the Beliefs will be at an End in less than a Fortnight. You know upon what Account I am here, which cannot distance me. Be therefore comforted, and do not grieve. God will assist us. I neither know, nor have had any thing against Mr. *Harvey*, nor can they do any thing to him, unless he has other Affairs which I know not of, therefore you may assure that *Providence*, that's fills, for I know nothing against that Gentleman, which is not innately regular.

He may only be supposed of being a Friend to the Pretender; but that was well known before, and it all who are to were to be powerful, above three-fourths of the Nation would suffer. Therefore I laugh at any thing they can do to us, all my Sorrow is not to be with you, and I would not see you in this wretched Place, in which you can but grieve both me and yourself.

Adieu.

Mr. *Harvey*. Pray, let me have the Letters; I have a little French, and I would willingly see how they render the Word *Terrin*.

Mr. *Just. Pratt*. When did you find this Letter?

Curtis. Upon the 24th Day of November.

Mr. *Just. Goss*. My Lord *Trenchard*, pray, be pleas'd to give an Account of the Occasion that this Confession was not sign'd by both the Secretaries?

Lord *Trenchard*. I suppose Mr. Secretary *Shute* might be gone out of the Room.

Mr. *Harvey*. I would not willingly trouble my Lord *Trenchard* at any other Time, and therefore would take this Opportunity, I think your Lordship bids, that the Letters that were sign'd at the Page















ought to be. The Overt-Act is, That he move several Letters to Foreigners, to move and excite a War, and sent them to Foreigners beyond Sea for that Purpose. I think this is a sufficient Description of the Overt-Act, and that it is as much as is required by the Act of Parliament. That Act is, That no Evidence shall be given of any Overt-Act, that is not express'd in the Indictment. Now can it say that there is not an Overt-Act expressly laid. It is expressly laid, and sufficiently denoted, that it is not necessary to mention all the Evidence that is to prove the Overt-Act, the Intent of the Law is so more, than that the Overt-Act should be sufficiently denoted and charged in the Indictment. It is here to charge and denoted, the Design and Intention of the Letters is set forth, and they go to prove these Letters, manifesting false Deeds and Intensions, were written, and that they have laid that he wrote several Letters to move that War, that they go to produce the Letters. I am of Opinion, that they need not be more particularly described, and it would be foolish to try out all the Letters.

As to what Mr. Hargrave said on in Dr. Sadler's Case (which was a great Noise formerly, and has made free Noise now) the Question there put to the Jurors, was concerning Crimes and Misdemeanors, Writing of a Libel. As the Crime of a Libel consists only in the Words, and therefore they must be laid in the Indictment, he might as well have mentioned an Admonition upon the Case for Words. There the Words must be expressly laid, and they must be prov'd as they are laid. But here the Crime is compassing and attempting the Death of the King, and the writing and sending of Letters to Foreigners to excite a War is the Overt-Act, and that Act is expressly laid in the Indictment, which is sufficient, without setting forth the Words of the Letters.

If it be laid, that a Man did conspire and agree to levy War, a Time and Place must be laid, but all the Times and Places then and where he conspired and conspired, and all the Persons Names with whom he conspired and conspired, need not be set forth in the Indictment, neither need the very Words of the Conspiracy be set forth. I thought I might this Overt-Act is sufficiently laid, and as Mr. Sadler observ'd, if there were other Acts laid, but confining and agreeing to levy War, they might prove it by Letters, although no Letters had been mentioned; but here the Overt-Act is more particularly described, that he wrote Letters for that Purpose. These Letters are now offer'd to be read, and I think they ought to be read.

Mr. J. J. J. I am of the same Opinion. I think they have sufficiently set out the Nature of the Overt-Act, writing Letters, procuring Aid of Foreigners to assist in a Rebellion. Some of these Letters are sent by the Prisoner beyond Sea, and they can't be set out, and whatever is alleged as certain to the Nature of the Thing will bear, is certain enough.

But it is objected, you have the Copy-Book, and you might let them out by that. But they don't go on that only, but also on several Letters sent to and received by the Prisoner, and to set forth all those Letters go in an Indictment, is against Reason. But this is not the Matter now, for Mr. J. J. J. has shown you a great many of the Letters, which manifestly prove the writing and sending the Letters as charg'd in the Indictment, but without shewing they are not Evidence, you have run into Exceptions against the Indictment itself, for Uncertainty is not setting out the Letters particularly, which is not the Question now.

Mr. J. J. J. I am of the same Opinion, many Things have been said of great Care on the Letters to prove the Lie of the Subject. I hope so. I'll always take a due Care to put those Laws in Execution; but we must take Care of that previous Law, as Mr. Hargrave tells us, not to hazard it, by making it too difficult to convict any Man of such a Conspiracy. And if we should make such a Constitution of the Act, as it is, they cannot find, and it would be impossible to convict any Man in any Case.

The Act says, the Overt-Act shall be express'd, and it is not here? It is writing Letters, and with an Intire to levy War against the King; so that it is manifest that these were Letters, and the Purpose of those Letters is set forth. And whatever has been said of that Case that was in the House of Lords, none of you can say, but that it is sufficient in Informations or Libels, if they are set forth in Law, to set out the Substance of the Words. If a Man lies in set Offences, he is tied up to the very Words, and by a Letter or Syllable mistake, he may be gone; Therefore the best way is to set out the Substance only. Now what would you be the better, if you had what you ask, if there are several Letters, as I have said? It would only be setting out the same thing over and over again. I has manifest the Meaning of the Act as fully as if they had set out at large. But to say that a Man shall be bound to set out the Substance itself, when it is gone from him, when it is gone beyond Sea, though he come at it. If that were to be the Case, I Man might carry such a Correspondence, and you could never convict him.

I think this is sufficient to answer the Intent of the Act. They offer you Letters that correspond with the Indictment, and if they offer any others, they will not be proper to be read.

Mr. At. Gen. We will read our Letters as they are in Time and true Nature of the Correspondence.

Mr. Ward. I am inform'd there are different Hands in that Book. Now what if your Lordships will admit them to read it under a general Court of his owning it to be his Copy-Book, or whether you will not except that which is his Writing should be prov'd, and what is wrote by any other, to be wrote by his Direction, or Point, for a small Value, or in the Exhortation may run a Man out of his Life.

Mr. Hargrave. All that the Witness said was, that the Prisoner said it was his Copy-Book. Now whether he is to be affected by any Word in that Witness's, or what we will submit to your Lordships; and whether they ought not to single out those which were wrote by him, and which not, for his sake, that was said, that is, the Value is his, the Cover is his, and the Paper is his, but it will not imply that he is the Author of all those Letters.

Mr. J. J. J. My Lord, when they objected to our reading the Copy-Book, they ought to have made all their Objections together; but that being in the Case of Life, I won't stand upon that.

It is plain, it ought to be read, for you abridge the Letters, of which these are Copies, as I apprehend to be sent to France, and it is impossible to have them; then what Continuance have we touching these Letters? We have the taking the Book in the Custody of the Prisoner, and if there had been no more than in being found in his Custody, I apprehend we might have been let as to read them. But it goes a great way farther; for several of the Witnesses swear that he own'd it was his Copy-Book of his Letters.

Let's consider how this Evidence would have been, if it had been given to every Letter in particular. It would produce one single Copy of a Letter, and he own'd that was a Copy of a Letter wrote by him, will any one doubt but that it might be read? Now the Evidence say that he own'd this to be the Copy-Book of his Letters.

Mr. J. J. J. What the Court is in an doubt, we must not spend our Time in arguing Points that have nothing in them.

L. C. B. I am not more whether any of them are of his Hand-writing or not, I think they may be read.

[Then the Original Letters, and the Copy-Book were shown to Mr. Bowyer, and to Mr. Orrell, who prov'd above to be true Y. witnesses.]

[Clerk read.] This is directed to Francis Francis, and dated Paris, Feb. 15, 1715.

Mr. J. J. J. This is dated at Paris, Feb. 1715, but that is in our Sile 1714.

[Clerk reads.]

THESE are the Dealings of the Sinner Treacher and Relapsive with me, made me shew a belief that you would not otherwise bring them to Reading, than by pressing them without Mercy. Since you have taken the Trouble to begin, be pleas'd to continue to the last the same Attention to my Concerns which you have had hitherto, and never consent to any Accommodation till they have remitted not only my Difficulties, as you tell me by your last of the 18th Instant, but also the whole of what may come to my Share, either in Money or War, supposing there remains any unpaid, which I cannot believe. As for the fourth Share I have in the fifty odd Hangers, which I bought a share of my Friend, the Count de St. G., if, in order to ease of my Accommodation, you should consent you sell with their consigning into the Hands of Mr. Hovet, the agent and old Letters deliver'd, be prov'd, Sir, that to get the Remission, you'll first yourself under the Necessity to begin anew, to give yourself the same Trouble which you have taken hitherto. Therefore while you hold them, I beg the Favour of you to make an End of the Matter with them at once, and in order thereto, not to give them any Quarter. They have rendered themselves unworthy of it upon all Accounts. If in this Matter you think the Interest of the Chevalier (Sir Thomas) Hanger, Speaker of the last Parliament, may be useful to you, be done me the Honour to be one of my Friends. You have been so, and I flatter myself he will readily grant you his Assistance, when you have inform'd him how the Cafe stands, and of the unfair Dealing of those Merchants towards me. I am so sensible of Mr. Hanger's Favours, that I would do any thing to them in my Gratitude. Acquire me therefore with the true State of his Affair with the (a) D. D. and we'll see about it in such a manner that your Letter may warrant my Speaking; after which I shall do my best to procure him the Satisfaction he desires; be pleas'd to advise him of it from me. I hope that it's being you will acquaint me with the Conclusion of my Affair; in the mean time, I will assure you that 'tis not possible for any one to be more perfectly than myself, Sir, your most humble and obedient Servant, D. Ainsley.

Mr. J. J. J. We read this only for the sake of the Postscript, which we will read presently.

Postscript. This is not a true Translation.

L. C. B. What is your Objection to the Translation?

Postscript. There is not one Word true to it.

L. C. B. Who do you depend on to translate it for you?

Postscript. Upon Mr. Flint.

L. C. B. Tell us your Objection to the Translation; tell us any one material Part wherein the Translation don't agree with the Original.

Mr. Flint. One can't care in one's Head.

Postscript. I hope you will not take it for a true Translation when it is false.

L. C. B. We shall if you don't shew wherein it is false.

Mr. J. J. J. We will read the Postscript, but then shew any Mistake in that.

[Clerk reads.]

As I have Reason of private Convers to know what passes in the Country you live in, you will possibly oblige me in informing me of it now and then. I have perused of my Disposition, and that the State is so very concerned in my Country; without respect to the Government of my Wife and her Family, who is a Lib.

Postscript. That is wrong translated.

L. C. B. How do you translate it?

Postscript. You will oblige me kindly to inform me of the same. Be per furnished of my Disposition, and that the State has nothing in my Country: The Interest of my Wife, who is infinitely true.

Mr. J. J. J. That is to the same Effect as we read it. We will now read a Letter from the Prisoner to D. Ainsley, out of his Copy-Book.

[Clerk reads.]

Paris. Mr. D. Ainsley de Goulogre.

I Received the Honour of yours of the 26th past. I shall no ways spare the Sinner Treacher, but procure him to a final Judgment, which cannot be till July. He makes an Apothecary's Bill sets down the Wines that are sold, for the most part, at half a Crown per Bottle, but I shall prove him the contrary. I am very sorry that Subjects should go to France, but it is according to the Laws of this Country, where we have no need of Solicitations, without which he will, within that Time, be certainly adjudged to pay. You must in the mean time transmit him the Ori-

ginal











The Duke (going off) possibly, therefore I conclude, affixing you 8th, that the man can be infinitely than I am.

SIR,

Your most humble, and most obedient Servant,

D'AULMAY.

Postscript. That is wrong translated. In the French it is *Cypher* for *Cypher* which is given his Suit; and they have translated it, *all his Disgrace*.

Mr. Cropper. He talks of powerful Solicitation upon Sirs, that is, *as I love*, and what could that be to a Law-Suit here?

(Clerk reads.)

This is directed to Francis Francis, and dated,

SIR,

Paris, August 10. 1715.

**L**AST Night I received your last of the 5th Inst. viz. pray 10th, and as it is long, I will be brief.

The 1<sup>st</sup> of the Name of your Friend the Abbot, arrived here in Twelve Night is now Health. He is very well pleased, and will send thanks to his Friends in great Satisfaction Time. This very Moment I am going to attend upon him; I am as usual, and as I have, it is to be such but you after it. Departure.

Pray, continue informing me the abstract you can. (The Abbot) of that of our Friends. You know how dear they are to me, and what Cause I have in them; therefore do not deny me that favour, nor that of believing me perfectly as I am,

SIR,

Your most humble, and most obedient Servant,

PAYEN.

Mr. Cropper. Though this Letter is signed Payen, yet it comes from Dr. Selous, he says that Chapel of the Family is divided here, that the Duke is Grand. And that it was to return from thence, and keep his Vacation in London. Hence the Conversation was with the Duke D'Aulmay, but from this Time it was with the Duke of Orleans.

(Clerk reads.)

This is directed to Francis Francis, and dated,

SIR,

Paris, August 21. 1715.

**T**HIS is in Answer to your two Letters of the 12th and 15th Instant. I should have sooner answered the 15th, had it not been delivered to me after the Duplication of the last Post. Your Friend's Law-Suit will shortly, God willing, be ready for Trial, every Thing is preparing for it. The French, my Wife's Relative, has your your Letters, with which he is very well satisfied. He desires you, as well as myself, to let us hear from you often as you can. Since his Arrival he has had two Fins of a certain Age, of which the Duke has not had. He was purged Yesterday Morning, and in the Afternoon went to take the Air, so that he is now in perfect Health, and in a Condition to attend his Affairs with full Liberty. I have not heard from Mr. (a) H. and I do not believe he has changed his Habitation; at least it is not come to my Knowledge. The King has been indisposed for some Days past, but without Appearance of any ill Consequence. Thanks be to God, who will preserve him to us a long Time in his Majesty.

Had a dozen Soldiers of French Newsworthy, and in many of them, must needs possess the Body of Treasurer, and inspire him with all the Chequeurs he plays on. I shall write to him by the next Post, in the Style you advise me, and agreeably to my own Thoughts; for I swear to you, there's nothing I shall leave undone to get my Rights of so great a Knowe. I hope we will secure me, and that you'll give him an Quarter. Pray acquaint me with what you have done upon this last Incident.

SIR, I salute you, and am perfectly,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. Cropper. This explains that there was another Cause depending, besides that of the Law-Suit: For he says, our Friend's Cause will soon be ready to be tried, all Preparations are making for it. Now there was an Cause depending in France, for this French Letter from Dr. Selous, and it was pretended that there was any Law-Suit depending on that Side the Water.

(Clerk reads.)

This is directed to Francis Francis, and dated,

August 24. 1715.

**I** am very much surprised not to have heard from you by the Post that came on Yesterday. Our Friend was at my House expressing the same. He desires you, Sir, not to let us hear of your printing in it, and acquainting us with what passes with Robins: our common Friend's Law-Suit. When you write him, (a) H. before him that all our Friends are perfectly well. The King's Health grows better and better. Hence be praised.

I have had it much Business for some Days past, that I could not write to Treasurer. I would do it frequently, but I shall desire you not to give him any Quarter, and so believe me perfectly;

SIR,

Your most humble, and most obedient Servant,

PAYEN.

Mr. Sel. Gen. This shows a Diffinition between the Cause of their common Friend, and the Cause of Treasurer.

(Clerk reads.)

This is directed to Francis Francis, and dated,

August 28. 1715.

**I** received your Letter of the 22d Inst. Where I permitted to give you a Detail of all your paper concerning the Affair you know, you would be more easy than to me you appear to be, and charge us with left Negligence than you do.

(a) Mr. Harvey.

(b) Mr. Harvey.

(c) Mr. Harvey.

(d) Duke of Orleans.

(e) Lord Bolingbroke.

I know there are favourable Moments, which 'tis dangerous to let slip; but I need you not agree with me that 'tis almost impossible to forget all in a moment, and in order to that to take such right Measures as to be able to prevent them all? This is your charge, be persuaded of it, and that your Paper will more readily than you think it, give you all the Satisfaction you desire, if it appears to you just to me. You did me the Pleasure to acquaint me that on the 21st Inst. Treasurer was obliged to do so, to us his Associates within a fortnight, that he had made a new Chamber, demand Security for his Churches, and with the Message you were paid for upon this Demand. I therefore believed that after this we might hope to be at End of this Affair, and that neither your removal of but to perfect the Judgment of Rule of the 29th of July, nevertheless we are still off to the Month of October. Pray, acquaint me with the Cause of it.

We are here in a great Uncertainty about an Affair of the last Instance, God grant it may have a happy Issue. Pray continue writing to me very often, and believe that I will ever with all my Heart,

SIR,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. D. says. This appears to be a Letter in Answer to France's, wherein he complains that Things are not carried on with Vigour; I think, being in, there are favourable Moments, but are not to be let slip, and that all let be concluded with the private Affairs of Treasurer.

(Clerk reads.)

This is directed to Francis Francis, and dated,

SIR,

September 3. 1715.

**I** received your Letter of the 29th Inst. and as the Post is going on, I have only Time to write an Answer. I did not write to you by the last Post, neither did I receive any of your Letters. I am a great sorry for all the Trouble I give you with respect to the Law-Suit I have with your Honour. I shall still hope that your Cause will flourish both to itself, and to my Honour.

As at last had the Misfortune to lose the greatest of Kings, who, as we constantly you know it already, and on Sunday last, 12<sup>th</sup> of our past Eight in the Morning, with all the Circumstances of Religion and Gravity you were ever inspired in the greatest Heroes, and indeed in generally admired Kings, that he was as great as the last of Monarchs of his Line. Monday Morning my Lord Duke of Orleans, accompanied by the Princes of the Blood, and the Dukes and Peers, repaired to the Parliament, where he was declared Regent of the Kingdom with all the Authority due to that Dignity, and his illustrious Birth. All France is delighted to be under his Government, from which they can certainly expect nothing but happy Days, Peace, and Prosperity in the World has more Gratitude, Equity, Moderation, and Virtue in general, than that Prince. The Journey to Germany would be very rough, and I wish it may be performed, the rather because for the Kingdom you know, our Misfortunes have been irreparable, though not in the least I do, Things going on still better and better, be persuaded of it, as also that the Prince is taken of your good Will. In particular (c) Mr. H. undoubtedly be where you were told, for he has not appeared here. To us (d) D. D. and (e) M. B. are in a single week a small half Letter of the King, which a private Person has sent them, but they know that all their Friends, such as when they go to see and say every Day, they are still in perfect Health, and their Thoughts are very different from what they are in them, I mean that they are just as they ought to be, after their former state, it is not possible for me to send to you to Day what you desire of me, I will be for the next Post. Let not one slip without acquainting me of your Health, for which you know I am more concerned than any Body else, and be persuaded that I am, more than any Man,

SIR,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. Cropper, Junior. This Letter gives an Account of the Death of the French King, and the Things they are suspended, still they will go on, and it will be for the better.

This, I think, the next Letter is not directed to any Body. It came under a Cover which is lost; it appears to come from Dr. Selous, but not to be directed.

L. C. Baron. Is this one of them that was found in his House?

Mr. Dumas. This is one of them found there, and owned by him.

(Clerk reads.)

SIR,

September 6. 1715.

**Y**OUR Letter of the second Instant was just now deliver'd to me. I shall inform you, that 'tis as only on the 11th Instant we had the 24<sup>th</sup> Chance to lose the greatest of Kings; but that for the Contract of France, God had reserved M. the Duke of Orleans for our Regent, I cannot write any thing that can be depended upon in relation to what you desire of me. By your two last, in sooth as there is any thing I shall inform you of. Since the Abbot B. came into this Kingdom, he has been very often in the Country; he is as I actually there, as soon as he is returned I shall not fail speaking to him according to what you write; as I have no Intimacy with any Merchant, and he must be one that I can depend upon to make use of his Direction, I cannot give it you this Day, but I hope I may by the next Post; it is also more new, pray continue writing directly to me, and if you have any ready Hand, order that your own and your Son's, it would be to me to make use of it, I read one of Orleans, that is Key or Cypher for the principal Names which you may find me, and of which you should give a Copy for your own Use, would be necessary, for I will incessantly read it, and that such a Person appears to me very worthy. You'll find here enclosed the Picture you have delivered of me; it being impossible to send it to you without folding, when you have received it you must wear a Cloth, which you'll lay on a Table, and will lay also the Print upon it, which will



the Plains away. The Poet (going off) prides me, and I have but Time to tell you that I am your most humble and most obedient

PAYEN.

My Lord, this Letter is another Hand, and there is no

in it. It was found among your Papers, and you own'd it; it is proved by the 8. evidence.

My Lord, this Letter is another Hand, and there is no

in it. It was found among your Papers, and you own'd it; it is proved by the 8. evidence. My Lord, this Letter is another Hand, and there is no

[*Chit read.*]

This is directed to Francis Francis, and dated,

5. 1. 1718. It was found among your Papers, and you own'd it; it is proved by the 8. evidence.

My Lord, this Letter is another Hand, and there is no

in it. It was found among your Papers, and you own'd it; it is proved by the 8. evidence.

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My Lord, this Letter is another Hand, and there is no

at your last you acquainted me with your intention to do. To my D. D. who charges me with your last Letter in your, and who says that it is false. He says nothing of the Royal, which will give you to understand, that this is not a time to be forgotten, but to show more kindness than ever.

Perhaps some Letters for me will be delivered to you; as soon as you have received them, I desire you to forward them to me, either with the

Directions I have sent you, or directly with my own.

You know perhaps by this time, that the pretence that there are at *Haarlem* of Great war Ships, on Board of which are Arms, which has alarm'd some People, but without ground. For at this News to be true, it must be Arms that are sent to the King of *Spain*, as I am told; therefore this ought not to make any more noise. As for the rest, Sir, in all of recommended courtesy to God, and hope we shall soon be quiet, just at home, during the present. God knows I shall be oblig'd to the *French* who disturb the tranquillity, and we be put to it and indispensable Care which my Lord Duke of *Ormonde* takes upon him to procure us, the *Republic* which we have in great Occasion for, and of which we have so long been depriv'd.

You will judge of it by the List I send you of the Councils he has lately establish'd, and which are certainly made up of the most able, and most worthy Persons in the Kingdom. I expect to hear from you, and ever am, Sir, your most humble, and most obedient Servant.

PAYEN.

Whereabouts are we with our honest Man? I hope you will acquaint me by your next.

Mr. D. D. My Lord, the time when the King was put to request the Parliament with the Design of the *Parliament*, was the 2. of July.

We have a Copy of the *Parliament* in the *Parliament*.

Mr. D. D. My Lord, the time when the King was put to request the Parliament with the Design of the *Parliament*, was the 2. of July.

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Mr. D. D. My Lord, the time when the King was put to request the Parliament with the Design of the *Parliament*, was the 2. of July.

\* Date of Ormond.

† Date of Ormond.

‡ Mr. Harvey.

§ Date of Ormond.







are produced by the King's Counsel, we are entirely surprised at the Behaviour of them; the Prisoner has not been admitted to peruse his own Books, or to have access to any of his Papers. The Power of sealing Papers, that may be of use to a Man in his Defence, seems to me something dark; but I shall say nothing more in this place.

We shall give your Lordship an Account of the Prisoner's Character and Circumstances. He was under two Circumstances, even to the passing of his Cloths as Goods. People that are concerned in Things of this Kind are usually better informed than he seems to have been. And we shall show that he has at all Times given all Influences and Proofs of his being quiet under the Government, and well affected to it.

Under these Circumstances, if there was stronger Evidence than in the Copy-Book, it would not be sufficient. I hope, Gentlemen, you were not so much divided between these Letters in the Copy-Book and those that were not so, when, however, how criminal these may be, can't be made use of to his Prejudice.

If we prove these Circumstances, which all that can be expected from us, we hope you will not think any thing in these Letters a sufficient Evidence to find him guilty of this Crime. And, Gentlemen, if any of these Letters can be such a Constitution, yet, considering the nature of the Copy-Book, and the manner of keeping such Books (which has fallen upon your Obedience at this time), and how good of Care he was in managing these Letters that came to him, you will not think it probable that he was engaged in a Correspondence of such a Nature; and if any thing looks that way, it may either be a Mistake in him that entered the Copies, or might be explained, if we were Masters of the rest of the Letters, and of the Book.

Mr. Hangerford. My Lord, I shall take up but a very little of your Time till we have gone through our Evidence, and then shall apply myself to make some Remarks upon it. But in general, the Accusation contained in this Indictment is, that the Man has used Violence to take away the Life of the King, the Queen, &c. And we are, that he conspired to do so in War, and endeavoured to engage Assistance from abroad, and twice Letters, and sent them to divers Persons & your Lordship that Part, etc.

Gentlemen of the Jury, I am sure you must observe, that as so a direct Proof of his intending to take away the truly precious Life of the King, there is none, but what is undeniably to be inferred from these Letters. If there were, I am sure I could not, and, I believe, none of my Profession would have spoke any Word for him. But still this is said in favour of himself. I have in my Consultation papers, but that this Man consulted with himself and his Company, how to take away the Life of the King, as in any of these Letters, there is nothing in them that looks that Way. And what is contained in the Letters received from France, they cannot contradict him. All that can be inferred from them, is, that he was very much concerned in these Letters; And that that was High-Treason, yet it can only amount to Mischance of Treason in the Prisoner. You may live in the great Trading City, the most eminent for Trade and Commerce in the World, in which, I believe, you are very much concerned, know that a great Part of the Commerce is carried on by Letters, and all or most of them are entered in Books; you must have a due Apprehension of the Consequences of such a Transaction as this is. To have a Man living in his House in Peace, under the Protection of the King's Laws, to have his Books and Papers taken from him, and those Books and Papers sent against him, to the Destruction of him and his Family.

Mr. At. Gen. I desire you would forbear weighing in this Manner. This is not a proper Manner of Proceeding.

Sir J. Topham. You have had an Account that an Information was given to the Secretary of State, of a reasonable Correspondence carried on by this Man, and here it is an Harangue complaining that his Person and Papers are seized. You know if there had been an Information given to the secret Officer in the Kingdom, he could not have justified himself, without doing the same Thing.

L. C. Bore. You are not to arraign these Proceedings.

Mr. Hangerford. I don't doubt but that several Lord had Grounds for what he said, but what Grounds he had do not appear. And surely I have a Right to observe, that all the Evidence that appears against the Prisoner, arises from these Letters and Books that were taken away from him.

Mr. At. Gen. Pray Mr. Hangerford add within the Bounds of your Profession.

Mr. Hangerford. Mr. Attorney, I am to be controlled by the Court, and not by you. I owe Duty to my Lords the Judges, and I shall always pay it.

Mr. Ju. Trep. You ought not to reflect on that Master of seizing the Papers.

Mr. Hangerford. I am not understood. I say all that is offered against him is found in the Papers and Copy-Book.

Mr. Ju. Fratt. If that was all that you had you ought not to have been interrupted; but I never knew in my Life, but what was done in this Case was ordinarily done in the like Cases, and ought to be done; and you ought not to go on with Invectives to the Jury, complaining that his Papers are seized, and then that those Papers are turned against him. When Correspondence is carried on by Letters, ought they not to be seized? and if they appear to be treasonable, ought they not to be kept and made use of against him? We must not sit here to hear ourselves against Magistrates of the highest Quality, for doing that, which if they had not done, they had failed in their Duty.

Mr. Hangerford. I have not said any thing to impeach the Legality of what was done. All I said, and do say, is, that the Evidence is from the Papers found in his own Closets.

You have heard the Letters read, and you observe, that great Part of them is about Dogs and Horles, and a Son of 1750. A. and about a Book that was carrying on in the Court of Chancery. As to the Book, I shall touch no more upon it now, but I believe we shall be able to offer Proof that there is not any Part of it untrue by himself. How that will agree with the Evidence already given, we must submit. We shall likewise give some Account of some Discourses that had been had with the Man himself. And, I believe, I need not allude to Gentlemen of your Figure and Circumstances, that the Mr. Harvey, who is represented by the King's Counsel, to be the first Prosecutor of, and carried on this treasonable Correspondence, is at Liberty, even without a Trial; and what the Law hath done.

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for him without a Trial, I hope shall, by your Justice, be done for the Prisoner now upon his Trial, that is, that he shall be acquitted.

Mr. Ward. Through it is difficult to make him put in any of these Letters, yet we will call some Witnesses to explain one, which sometimes perform on or 60 Thousand Letters a Year, and show that it was meant to be that was done, and in the Revenue in France, and followed by it.

Mr. Ju. Fratt. If you are going to explain that Letter, it will be necessary to read it again in the Jury.

What was done accordingly, Mr. Ward. We will show it was meant to be sent to George Franks, who had been concerned in the Revenue in France.

George Franks has been found.

Mr. Hangerford. Did you know George Franks?—S. Franks. Yes, Mr. Hangerford. Was he concerned in the Revenue in France, and had he any Letters there?—S. Franks. Yes, he took all he had.

Mr. Hangerford. By what Occasion was it?

S. Franks. I don't know.

Mr. Hangerford. Was it by his own Management, or depending on others?

S. Franks. I don't know, but I know he had an Estate and took it all.

Mr. Ward. We offer this only as a Sample for the rest.

Mr. At. Gen. What was this Man worth?

S. Franks. I computed him to be worth about Ten Thousand Pounds.

Mr. At. Gen. Doth he answer the Description in the Letter of a Person of Fifty or Sixty Hundred Crowns a Year?

S. Franks. Had he any Estate in Land?

S. Franks. No, only in Money.

Mr. Hangerford. Do you know of any Offers that have been made, or Threats said to the Prisoner?

S. Franks. I know of none.

Mr. Hangerford. By whom?

S. Franks. By Mr. Baskley. That if he would swear against Mr. Harvey of Gosh, he should have a good Reward.

Mr. Hangerford. Do you know of any other?

S. Franks. Yes, my Lord. I have told you he had given my Brother five Guineas, and he would give him more if he would swear against Mr. Harvey.

Mr. Hangerford. Where did he tell you of this?

S. Franks. In the Office at the Cockpit.

Mr. Hangerford. Do you know any thing of two Warrants that Mr. Baskley brought, one for his Release, and the other for his Confinement?

S. Franks. I don't know any thing of that.

Mr. At. Gen. How came this Dispute between my Lord Trenchard and you?

S. Franks. I was several Times with him at the Office about my Brother.

Mr. At. Gen. I hope it will be proper at this Time that my Lord Trenchard and Mr. Baskley may be able to give us an account.

Mr. Ju. Fratt. I suppose you were going when the suit between Mr. Baskley and the Prisoner?

S. Franks. It was between my Lord Trenchard and me, and Mr. Baskley and me.

Mr. Ju. Fratt. Who else was by, besides Mr. Baskley and you?

S. Franks. No Body else.

Mr. Ju. Fratt. Who was by when that which you mentioned paid between my Lord Trenchard and you?

S. Franks. No Body else. The first Time I applied to my Lord Trenchard, I think there was another Secretary there.

Mr. Ju. Fratt. But at that Time that you say this Offer was made was any Body present?

S. Franks. Indeed I don't remember that there was.

Mr. Chaper. I think you say, the first Time you were with my Lord Trenchard, there was the other Secretary there?

S. Franks. Yes, there was?

Mr. Chaper. Where was that? in what Room?

S. Franks. In the Cockpit.

Mr. Chaper. What was your Relation to the Prisoner?

S. Franks. I am his Brother.

Mr. Hangerford. You say there was another Secretary by, was it the other Secretary of State?

S. Franks. I know not who it was, there was another Gentleman.

Mr. At. Gen. He had another Secretary of State.

L. C. Bore. What did my Lord Trenchard say to you?

S. Franks. He said he had given my Brother five Guineas, and he would give him more if he would swear against Mr. Harvey.

L. C. Bore. You say at that Time there was another Secretary?

S. Franks. No, not at that Time of that Discourse.

L. C. Bore. Nor there was no Body with you and Mr. Baskley?

S. Franks. No.

Then Lay White was sworn.

Mr. Hangerford. Was you by, or in hearing, when any Offers were made to the Prisoner?

S. Franks. Upon the Seventh of September I went to see the Prisoner in Newgate. He told me Mr. Baskley was to be there with him, and desired me to conceal myself in the Room, in I might hear what he said, and I did so. When Mr. Baskley came he spoke about my Brother, and afterwards Mr. Baskley asked him several Questions about Mr. Harvey. He said he knew nothing but that he was innocent. Mr. Baskley said he would swear High, or would swear against the Prisoner; for he had taken Money of my Lord Trenchard, and done nothing for it.

Mr. Hangerford. Did you see any thing of two Warrants Mr. Baskley had at that Time?—White. No.

Mr. Hangerford. Did Mr. Baskley see you?

White. No, I concealed myself under the Feet of the Bed.

Mr. At. Gen. You say this was the Seventh of September. What Year?

White. In the Year 1716.

Mr. At. Gen. What was he then?—White. In Newgate.

Mr. Hangerford. Then Mary Morgan was sworn.

Then Mary Morgan was sworn.

Do you know of any Offers that were made to the Prisoner, and by whom?

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.

White. No.



*Messias.* Upon the Twenty-eighth of September 1681 I was in Mr. Francis's Room, and Mr. Buckley came in and told him he should be tried suddenly, and there were a great many Witnesses against him; and he would swear against him, because, says he, you have cheated my Master of five Guineas, and won't swear against Mr. Harpoy.

*Mr. At. Gen.* Was you in the Room then?

*Messias.* I sat upon a little Box at the Bed's Feet, and it was so thick he could not see me.

*Mr. At. Gen.* How came you to *Naugate*?

*Messias.* I have been a great many Times in *Naugate*.

*Mr. At. Gen.* You dwell there sometimes, don't you?

*Messias.* No, I never did.

*Mr. At. Gen.* Are you a married Woman?

*Messias.* Yes.

*Mr. At. Gen.* What is your Husband?

*Messias.* A Dealer, but he is not in *England* now.

*Prisoner.* What Room was I in?

*Messias.* A little dark Room.

*Prisoner.* What do they call it?—*Messias.* The Lion's Den.

*Prisoner.* Every Body knows that Room is a dark Room, that People can't easily be seen in it.

*Mr. Hungerford.* Did you hear Mr. Buckley say any thing more?

*Messias.* Nothing, but that he would bring my Lord *Townshend* into Court, on purpose to influence the Jury by his Presence.

*Mr. Hungerford.* As to these two Witnesses, we have several to speak to their Reputations; but I believe you have no doubt as to that.

*Sir J. Tyld.* I dare say no one Person in Court believes a Word they say.

*Prisoner.* I desire to know whether you was not with me in the Lion's Den.

*Mr. Buckley.* My Lord, the Prisoner sent to me by *Remil* the Turnkey, and desired to speak with me; when I came to him, he spoke to me full about *Fives*, and desired he might be excused from his first Confessionment; and then about his own Affairs. He thank'd me for my Humoury in coming to talk with him, so we parted immediately. I told my Lord *Townshend* what had pass'd, *Remil* had the benefit of it. He had been confest able, but *Francis* speaking on his behalf, he was released from that Confessionment; and that was the Business I went about. The Room is a little dark Room, but if any Body had been at the Foot of the Bed, I believe I might have seen them.

*L. C. Bares.* Did you say those Words?

*Mr. Buckley.* No, my Lord, it is impossible I should.

*Mr. Hungerford.* Not impossible fairly?

*Mr. Buckley.* Yes, impossible, I appeal to my Character: I entirely and utterly deny it.

*Mr. Ward.* We are now in our Evidence.

*Mr. At. Gen.* If the Prisoner call a Witness that has been called before, and he to make his Evidence entire, appeals so *Remil*, we ought to call him now, for it would have been improper before.

*Mr. Hungerford.* If it be nothing but that he was sent for Mr. Buckley, there is no great Harm in it. Otherwise we are in the Courts of our Evidence.

Then *Remil* was sworn.

*Mr. At. Gen.* Do you know the Occasion of Mr. Buckley's coming to *Francis* in *Naugate*? Give an Account of what you know of it.

*Remil.* My Lord, Mr. Francis called to me one Day, and I think it was when I was in the Chapel, and told me, I believe I can do a Piece of Service to the Government: I believe I can suppress the publishing of the *Ship-Tyld*, I am sure I can: Pray, let me speak with Mr. Buckley. Says I, if you would have me, I will go to him, and desire him to come. When would you speak with him? At any time, says he. Then I believe the Morning is the best to meet with him; and the next Morning I went to him.

*Sir J. Tyld.* Did you tell him the Occasion of *Francis's* desiring to speak with him?—*Remil.* Yes.

*Sir J. Tyld.* Was you in the Room with them?

*Remil.* No, but afterwards he led to me, I think I have done the Government some Service, you don't hear it come out as it us'd to do.

*Prisoner.* I desire to know whether Mr. Buckley was not angry with you that you did not stand at the Door?

*Remil.* He order'd me to be about the Door; but there came some Workmen to survey the Chapel, I was oblig'd to go with them, and he came out and was angry that I was not there; and after that I stood there till they had done, but I did not hear what *Discourse* pass'd.

Then the Lord *Townshend* stood up.

*Lord Townshend.* My Lord, Mr. Buckley came to me, and told me of the Message he had receiv'd from the Prisoner about the *Ship-Tyld*, a French Paper that was sent about the Kingdom. He said he said if he should go; I told him I thought it was right to go, but I told him he must be cautious, for I did not doubt but that the Prisoner was capable of that Villany I now find he is. He came back to me, and told me what he has now said; and I believe it to be all that pass'd between them, for I have always found him faithful and honest. I thought it was a Service to put a Stop to that Paper; and I did give some Rule so that Men that is named.

I am amazed how there can be such Villany as in the Brother. He came to the Office two or three Times with *Pensions*. I never fail my thing more, than that it was not in my Power to do any thing, that he might deal generously, tell all that he knew, and show that he would speak all the Truth, that that was the Way to recommend him to the King's Mercy; that I could not do any thing without it. And I believe the manner I treated Mr. Harpoy will justify me, with all that know any thing of it, from the Suspicion of such Inventions against him. All that I did was in regard to the Prisoner's wretched Circumstances, and before Mr. *Stanhope*; and I never said any thing of him, but to tell the Truth, and the whole Truth.

*Prisoner.* You told me I should be hang'd, drawn, and quarter'd; and your Lordship told me many a time, Damn you, you Dog, now I have got Mr. Harpoy in my Pocket, and you will let him go from me. If there was no particular Answer against me, why should I be distinguished, for none were put to loss for unreasonable Practices, but me.

*Lord Townshend.* I would not take up your Lordship's Time, but only to say, that the Warrent for Irons, and to be kept without Pen, Ink, and

Paper, was after that Letter had been delivered to me, the Contents which will sufficiently justify the Possessions used in that Warrent. I was sorry to see the ill Use he made of the Liberty that I had before given him, and I did see that Warrent in that manner. Treatable Practices were then as more valuable than Treason; and it's no new thing to suffer State-Prisoners under such an Accusation.

*Mr. Ward.* I beg leave to ask your Lordship one Question. Whether you apprehend that *Carvi* deferr'd any Credit?

*Lord Townshend.* I can say no more, than that he made some Difficulties, and there was no Prosecution against him. I knew nothing of the Man before, and I knew nothing more of him now.

*Mr. Ward.* Did those Informations appear to be true?

*Lord Townshend.* A great Part did, by the Confession of one of the Prisoners he accus'd.

*Mr. Hungerford.* As to the two Women that were examined just now, there was a Remark made, that their Testimony was extraordinary; I have five or six People to speak to their Reputation, if it sticks with the Jury.

*Mr. At. Gen.* Perhaps such as themselves; but however call them.

Then *Mr. Everall* was called.

*Mr. Hungerford.* What do you know of *Whit* or *Messias*?

*Everall.* I know nothing of them.

*Mr. Ward.* Do you know where the Prisoner's foreign Letters used to be kept?

*Everall.* His Letters always came to my House.

*Mr. Ward.* Was he usually watchful for the coming in of his Letters, as if there was any Thing of Concern in them?

*Everall.* No, they often used to lie some time before he called for them.

*Mr. Ward.* How long did they stay to be?

*Everall.* Sometimes three or four days.

*Mr. Ward.* Were they kept up close till he called for them?

*Everall.* No, they lay in a public Room, so that any one might see them.

(Then *Mr. Everall* was sworn.)

*Mr. Hungerford.* What do you know of any Letters directed for Mr. *Francis*? where were they kept?

*Mr. Everall.* They used to be brought to our House, and they have lain two or three Days together on a public Table before they have been sent away.

*Mr. Hungerford.* How long ago was that?

*Mr. Everall.* About seven Years ago.

*Mr. Hungerford.* Have any been directed to your House of late?

*Mr. Everall.* No.

*Mr. Ward.* We shall now examine some Witnesses to the Copy-Book, to prove that it is not of his Hand-writing; and I don't doubt but that will have its Weight.

*L. C. Bares.* He own'd it to be his Copy-Book of his Letters to his Correspondents.

*Mr. Hungerford.* We lay the Stress upon this, that he said it was his Copy-Book of his Letters to his Correspondents Abroad.

*Mr. Ward.* But you know Mr. Buckley had a Stress upon its being his Hand-Writing.

(Then one *Refter* was sworn.)

*Mr. Hungerford.* Show him the Copy-Book: look upon it, are you acquainted with the Prisoner's Hand-Writing?

*Refter.* Yes.

*Mr. Hungerford.* Is any Part of that Book his Hand-Writing?

*Refter.* No, I take it to be his Son's, *George Francis's*. The Prisoner writes a smaller Hand. I take no Part of it to be his Hand so far as I have gone.

*Mr. Hungerford.* I believe it may be of use for all the Witnesses to look it over; we have four or five to this Point; and if I am rightly instructed, there is not one Word in that Book wrote by the Prisoner.

*Mr. Just. Prev.* If it is not his Writing, whose do you take it to be?

*Refter.* I don't take it to be his.

*Mr. Just. Prev.* Whole do you take it to be? Are you acquainted with his Son's?

*Refter.* I don't know whether it is his Son's or not.

*Mr. Just. Prev.* Are there any other Persons that write for him?

*Refter.* He had sometimes.

*Mr. At. Gen.* Here is a Letter of his own Writing; pray let him look on that, and see whether that is his Hand; do you believe that to be his Writing?—*Refter.* No, I don't think it is.

*Mr. At. Gen.* Can't he prove that he own'd that Letter.

*Prisoner.* What Letter did I own?

Then *John Francis* was call'd again.

*Mr. Hungerford.* What do you say to that Book?

*J. Francis.* There is not one Syllable of his Writing in this Book; I have known his Hand-Writing about twenty Years.

Then *Barnell* was sworn.

*Mr. Hungerford.* Are you acquainted with the Prisoner's Hand-Writing?

*Barnell.* In any of that Book of his Writing?

*Barnell.* None of it is his Writing.

*Mr. Hungerford.* Do you know what Condition of Health he was in about the latter End of the Year 1714, and 1715?

*Barnell.* He was sick.

*Mr. Hungerford.* For a Year before he was taken, what Condition was he in? Was he able to write Letters?

*Barnell.* He was sick.

*Mr. Hungerford.* Did he like to write Letters in that Time?

*Barnell.* I don't know.

*Mr. At. Gen.* What Hand do you take it to be?

*Barnell.* How do I know that?

*Mr. At. Gen.* Are you acquainted with his Son's Hand?

*Barnell.* No, not at all.

Then *Simon Francis* was call'd again.

*Mr. At. Gen.* You have looked on the Book; whose Hand-Writing do you take it to be?—*J. Francis.* I don't know.

*Mr. At. Gen.* Do you know his Son's Hand-Writing?

*J. Francis.* I never had any Correspondence, or great Acquaintance with him.

*Mr. At. Gen.* Did you ever see him write?

*J. Francis.*



*S. Parnis.* I don't remember that I did.  
*Mr. Ward.* We will trouble you with but one Piece of Evidence more;  
*Dr. Cad.* *Mr. Cad.* who attended him in his Sickness. We have  
 offered Evidence, that no Part of that Book is his Writing; we will now  
 offer more Proof that he was not capable of writing at that Time.

Then *Dr. Cad.* was sworn.  
*Mr. Ward.* Pray, Doctor, did you attend the Prisoner as his Physician  
 at that Time?  
*Dr. Cad.* My Lord, I was sent for to him on the second Day of No-  
 vember, 1714. I attended him till the 18th of the same Month, and  
 when that Time I visited him nine Times, I found him in a great Deal  
 of Pain, and he was lame in his Hand; some Time after my coming he  
 grew better.

*Mr. Ward.* Was he confined to his Bed?  
*Dr. Cad.* Sometimes he kept his Bed, and sometimes he sat up.  
*Mr. Ward.* You say he was in Pain, and lame in his Hand; which  
 Book was it?

*Dr. Cad.* I don't remember which; nor do I know any Thing of him,  
 at that Time.

*Mr. J. Telford.* Every one of the Letters were wrote after that Time,  
*Prisoner.* What Condition did you leave me in?

*Dr. Cad.* In a very bad Condition.

*Prisoner.* Did you not hear of the Condition I was in afterwards?

*Dr. Cad.* I don't remember that I heard any thing of you after that.

*Mr. Ward.* We will call a few Witnesses to prove what Circum-  
 stances he was in, and that he was well affected to the Government.

*Mr. Hangerford.* By my Intimations he appears to be a Forfeiter, and  
 is denounced as such by the unfortunate Declaration that are amongst us; And  
 accordingly there is nothing of Whig or Tory in his Letters.

*Mr. Ald. Geo.* Don't you remember when he came to Newcastle he wrote  
 he left his Company, far he found there all Tories.

*Mr. Hangerford.* We will shew you that he was zealous for the Good of  
 the Kingdom, and was against all that was disadvantageous to Trade on the  
 late Treaty of Peace. That he never went into any public Places, except to the  
 Grosvenor Coffee-House, which is a Place free not tainted with Sedition.

Then *Mr. Russell* was call'd again.

*Mr. Ward.* How long have you known the Prisoner?

*Russell.* Several Years.

*Mr. Ward.* Has he been peaceable, and easy in his Conversation, with  
 respect to the Government?

*Russell.* I remember at the proclaiming the Peace he said, he thought  
 the Nation was ruin'd, for he thought it a scandalous Peace.

*Mr. Ald. Geo.* That is much, for you make him a Frenchman, for he  
 must have approved it.

*Mr. Hangerford.* This is not what I have in my Brief, but perhaps he  
 may recommend himself to your Ears by it. He doth not to mine.

*My Lord.* I will take up your Time only with this Remark: The  
 very Foundation of this Evidence is the Confession made by the Man  
 himself. Without the Key made by him, this had been applicable to any  
 Man. I remember Sir *J. Telford* was pleas'd to say, he would not ex-  
 ceed the Powers of the Jury, but rather appeal to their Judgments, for  
 will I. Great Part of this Correspondence shew to Mr. *Hornay*, and  
 we would have thought they had something extraordinary to have charged  
 on him, considering the Length of his Retraint; but I need not observe  
 to the Jury that he is at large. He was under Restraint, nothing could  
 be imputed to him, and he is discharged.

*L. C. Boreau.* Francis, have you any Thing more to say?

*Prisoner.* As for my Nativty I have more Witnesses. I have more  
 Witnesses as to my Character. I have more Witnesses to prove that I  
 was a quiet Man, and never dissatisfied to the Government.

Then *Mr. John Slater* was sworn.

*Mr. Hangerford.* What do you know of the Prisoner's Behaviour?

*Mr. Slater.* I have known him about four or five Years. There being  
 a Commission of Bankruptcy against him, I was recommended to assist  
 him in that Commission. I did give him the best Assistance I could, and  
 I several Times met him, sometimes at the Grosvenor Coffee-House, and  
 sometimes at my own House. I took him for a Frenchman, he said very  
 much to expose the Interest of the King of France, which I said to chide  
 him for. As for Parties here, I had some Discourse with him, and he  
 said to think we were a strange People to fall out among ourselves.

Then *Thomas Richardson* was sworn.

*Mr. Hangerford.* What do you know of the Prisoner and his Behaviour?  
*Richardson.* I have known him five or six Years, and I believe I have  
 taken five or six Pounds of his Money. When was sick he took a  
 Quack to me, and would not be quit unless I came often to see him, and  
 said often to sit with him as an Evening and bear him Company, and it  
 was a great Surprise to me when I heard he was taken up, for he said often  
 to drink a Health to King George, and hoped he should get up to see him,  
 but hoped this would be a quiet Nation again. He was then so weak  
 he could not sit Hand or Foot. But he said to call me *Falsh*, and  
 did not drink King George's Health.

*Mr. Hangerford.* How long is it since he was so weak that he could  
 not sit Hand or Foot?

*Richardson.* About a Year and five or six Months. And when he got  
 abroad I then was forced to follow him but what he owed me, and I have  
 since after his several Times to the Grosvenor Coffee-House.

*L. C. Boreau.* Have you any thing more to say?

*Prisoner.* No.

*Mr. Ser. Geo.* My Lord, I shall beg Leave (by Way of Reply to what  
 has been offered on Behalf of the Prisoner) to say, That this is a Cause  
 very great Concern to the King, to the Royal Family, and to the whole  
 Kingdom in general; and I may with Justice affirm, that this Day one  
 of three two Points must be determin'd; either that the Prisoner at the  
 Bar is guilty of High-Treason, or that no Man can, as the Law now  
 stands, be convicted of holding a foreign, treasonous Correspondence, if

that Evidence be not sufficient; for here has been the strongest Evidence  
 given of such a Correspondence, as I believe ever was, or perhaps ever  
 can be given, according to the Nature of the Thing.

The Gentlemen of the Jury will consider the Nature of the Treason, as  
 it is laid in the Indictment; it is for compassing and imagining the Death of  
 the King; now, that rests in the Imagination, and a complex in the Mind;  
 but there must be some open or public Act that must appear to you in Proof,  
 to convince you that the Prisoner had that Imagination. There are three  
 Open-Acts laid in this Indictment, and we have produced Evidence suffi-  
 cient for the Proof of two of them, though if any one of them be prov'd it is  
 enough. The first is, compassing, confining, and agreeing to raise an  
 Insurrection and Rebellion within this Kingdom, in Favour of the French-  
 King; and for compassing, confining, and agreeing to solicit and procure  
 from France, Arms, Ammunition, Men and Money, to aid and assist  
 in such Rebellion; and the last is for compassing and writing several trea-  
 sonable Letters, declaring his Intention and Resolution to levy that War,  
 and to raise that Rebellion.

The Evidence that has been given is of two Sorts; it consisteth, first, of  
 Letters wrote by the Prisoner himself to his Correspondents in France;  
 and secondly, of Letters wrote to him by such Correspondents, signifying  
 the Receipt of Letters wrote by the Prisoner to him, touching this trea-  
 sonable Design. For Proof of the Letters wrote by the Prisoner, we have  
 produced his Copy-Book of Letters, wherein they are entered, proved to be  
 Part his own Hand-writing, and the rest his Son's; and indeed it is a  
 surprising Thing, that that Copy-Book should remain, which indeed is  
 to fore a Way to perpetuate the Testimony of Treason, as I believe the  
 like Evidence is never to be expected again; and it is almost to expect,  
 when a Traitor writes in a foreign Country, that he should be able to  
 produce the Original Letters. The Proof of this Copy-Book to be his is  
 beyond doubt, it is prov'd by his own Confession, before three Witnesses,  
 and in very strong Terms. This, says he, is my Copy-Book of my Letters  
 to my Correspondents abroad. It is possible that stronger Evidence can be  
 given? Nay, he goes further, as a Noble Lord informed you; for when  
 he was examining the Prisoner, and the Prisoner pretended that he was  
 only a Conveyer of Letters, but did not write himself, says he, *As to what  
 I have wrote, I appeal to my own Copy-Book of Letters.* They have brought  
 indeed some Witnesses to say, That they believe that the Copy-Book is  
 not of his Hand-Writing, though they don't tell you whole Hand it is,  
 but that it is not material, nor of any Weight for Copies of Letters are  
 sometimes used by the Parties themselves, and sometimes by their Ser-  
 vants, or others, who write for them, and that is the first thing; but to  
 answer that fully, the Prisoner has confessed that Part of this Copy-Book  
 was his own Hand-writing, and the rest of his Son's.

As to the other Letters from *D'Almeida*, his French Correspondent to  
 whom are many in Number, we have given the best Proof the Thing  
 is capable of, we have produced the very Original Letters themselves, di-  
 rected to him, with the Post-Mark from France, found all in his Custody,  
 and confes'd to be his Letters which he received from France, before three  
 Witnesses. This shews evidently that there was a treasonous Correspondence,  
 and in plain Evidence, that the Prisoner sent these Letters men-  
 tioned to be received in *D'Almeida*'s Letters to him, to which were  
 Answers, and the Letters exactly tally as to Dates, Circumstances and  
 Subject. If there had been but one of those Letters sent to the Prisoner,  
 containing treasonable Matter, it would have been Misprision of Treason;  
 if he had not discovered it; but his going on with the same treasonable  
 Correspondence for Months together, and in so many Letters, in every  
 one of which he charges the Prisoner with writing High-Treason, and he  
 preserving all those Letters, concealing and keeping them close; this is a  
 strong Evidence of his Approbation and Assent to that Treason and trea-  
 sonous Correspondence. And so it is in the common Case, if a Man meet  
 accidentally, not knowing of the Design, and light into the Company of  
 Traitors, and hear their Discourse and say nothing, if he don't discover it,  
 he is guilty of Misprision of Treason only, as a bare Concealment;  
 but if he comes a second Time into their Company, and meet them again  
 and hear their Conferences, or the same Treason is peeped and talk'd  
 of, and he conceals it, he is guilty of High-Treason; because it shews a  
 Likings and an Approbation of their Design, and so it was resolved in *Sir  
 Edward Dyer's Case*. So here, all these Letters that came from *D'Almeida*,  
 and were kept so close by the Prisoner, containing treasonable Mat-  
 ter, shew his Approbation of the Treason, and are a strong Evidence,  
 that he sent the Letters to his Correspondent *D'Almeida*, with which there  
 are Answers. It has been said, that admitting these Letters were sent by  
*D'Almeida* to the Prisoner, yet he is not answerable for what others  
 write: That, surely, is a great Mistake, for if what he writes be Treason,  
 it is his Duty to disclose it; and if he do not, but continue to receive  
 such Letters, this is a clear Proof of his treasonous Correspondence, and  
 that he makes the Treason his own. They object farther, that the  
 Prisoner was only a Conveyer of Mr. *Hornay's* and the Duke *D'Aumont's*  
 Letters; but that this is otherwise, appears from the Letters themselves,  
 for most of them relate to himself, and are meant of himself, and of a Cor-  
 respondence with him; for it appears from his own Confession in his  
 Examination proved by three Witnesses, that this French Correspondence  
 held from a little before the late Queen's Death, till a few Days before  
 his Examination; which shews that the Correspondence was his own,  
 and carry'd on by himself.

In the next place we come to consider the Expedition and Meaning of  
 these Letters, whether the Subject Matter be Treason or not; one of the  
 Counsel for the Prisoner said, there was nothing in them but about Dogs  
 and Horles; but that is a Mistake, for those were Mr. *Hornay's* Letters,  
 which talk'd sometimes of Dogs and Horles; but give me Leave to say,  
 those terms even in them to be a good deal of Treason, inasmuch with  
 the Distinction of Dogs and Horles. Let us examine some of his own Let-  
 ters, and see whether the Subject Matter be not treasonable. It is not to  
 be expected that Men will in their Cases speak out plainly, yet the Treason  
 is always to be dress'd up in a Cant, and many of these Cants have  
 appear'd in this Place. In my Lord *Proby's Case*, the Over-Act charged  
 there, was sending treasonable Letters to France, to give the Prince of  
 that Nation an Account of our Strength and Forces here, shall Letters  
 run







order, as indeed well he might, that he might be himself ready to discharge all that he was to do, for what Purpose he thought fit, and being one of his own Letters, which he bore to the King, and being of his Correspondence Abroad, would not have believed the Government Matters of the sort; I dare say Francis's impertinent Curiosity was then unthought of and unimagined. I am sorry, Gentlemen, to mention a particular Accident, which, however, serves to show that the Correspondence was of a dangerous Nature, otherwise what Account can be given, that that Gentleman should, on about twelve Hours after, make a desperate Attempt upon himself?

Mr. Harcourt. My Lord, I apprehend that nothing of this Matter ought to be mentioned here; whatever Mr. Hervey was liable to, he is now at Liberty.

Mr. Conyer. I say, my Lord, it had that Consequence, and it had been a Discovery of the utmost Importance, if it had not been thought very dangerous in its Consequence to himself, that Attempt upon himself never been made: But so it was, and it is so far material, as it was considered by Part of that Correspondence which the Prisoner was employed to transmit to the Conspirators in France.

You have heard, Gentlemen, that Francis, when he was first examined, expostulated for himself; that he promised to make a full Confession, and accordingly gave in his first, and second Indictment, which have been read to you, and I dare say, when he found those examinations, he really intended to best himself by a Discovery of his Treason; but when he had taken Counsel with his Party and Fellow-Prisoners in Newcastle, you find, by his Letter to his Wife, he changed his Mind, and the Expulsion is to this Effect, *He hopes he had said nothing that could hurt either himself or Mr. Harvey, and that he thought at any thing the Government could do to himself.*

Your Lordship has heard how artfully and maliciously it has been insinuated, that the Noble Lord, the Secretary of State, gave some Hopes of Intercession to be made in Favour of the Prisoner; I must believe, no Man living that knows that Lord, but thinks he would have been better served by his Word, if the Prisoner had himself desired it. Whatever was said upon that Occasion, proceeded from the Prisoner's Affirmation, that he would make a full Confession, that was the Ground and Condition upon which the Prisoner was told he should be recommended to Mercy. But let the World judge, whether that Noble Lord could justify it to the King, his Country, or to himself, to interpose in his Favour, when he came to discover, by a Letter under the Prisoner's own Hand, that he was intended to conceal all that he knew: Surely, the Condition being broke by the Prisoner himself, it became the Duty of the Noble Lord, not to be so much for an obdurate Offender, one that was determined to abide every Extremity, rather than do his Duty, by disclosing that Treason which were latent in his Breast; so that we may the Discovery which is made by the Examinations to the same Evidence that has brought to light the rest of the Evidence in a strange and wonderful Manner.

After for such Time has been spent, it would be tedious to observe the particular Passages of the Letters which have been given in Evidence; only this I would observe, that when the Rebellion was not so near at hand, there seems to be some little Caution used in penning the Letters which have been given of the Copy-book; but as the Time grew near, the Correspondence also grew more open and soon, as may be perceived by the Letters given Abroad; which is the Reason, Gentlemen, you find his discontinue entering his own Letters in his Copy-book. It has been said by his Counsel, can it be imagined that a Man would copy and enter Letters of a criminal Nature? but, Gentlemen, the Question is, Whether he has done it? And you hear he proved by three Witnesses, that he owned it to be his own Copy-book of Letters to his Correspondents Abroad; so that there can remain no doubt, but that every Letter in that Book is a Copy of the Original wrote by the Prisoner: Whomsoever will observe the Time when he discontinues entering his Letters as formerly, which was before the Rebellion was breaking out, will think it a strong Evidence, if Evidence were wanting, that the Letters entered, contained a criminal and traitorous Correspondence.

Had the Correspondence been innocent, the same Method would have been continued, for the Rebellion had nothing to do with the same Law-Suit. But as the Rebellion grew nigh, it became necessary to be more express and plain, as appears by all the Letters to Francis Abroad, which is the true Reason he discontinued entering his own Letters. Can any Body that can hear or read, doubt, but that the Prisoner continued to write to his Friend Pope? I think there is not one Letter directed to the Prisoner that does't in the first Line of it acknowledge the Receipt of the Prisoner's, *Yours of such and such a Date I have received*; and some of these acknowledge the Receipt of two Letters from the Prisoner at the same Time, which shews his Diligence, and proves that he wrote often to his Correspondent, and that his Correspondent to him. You see, Gentlemen, the Letters from D'Alway, also Payne, to the Prisoner make it manifest he went on to the full in the same traitorous Correspondence; but it can't be expected his original Letters should be produced. D'Alway's Letters plainly intimate the Tenour of the Prisoner's: I will trouble you but with an Instance or two amongst many that might be observed.

Of this kind are all their Letters which disclosed the Prisoner from being impatient, that give him a Assurance they are not distant; that promise him every thing will answer his Expectation. All these, and many other Expressions of the like kind, manifesting that he was soliciting Admiration France, and that he did what in him lay to incite, promote, and encourage an Invasion from Abroad, and the Rebellion at Home.

This, Gentlemen, is the Nature of the Evidence that has been laid before you: The Discovery was accidental, the tracing of it is strange and wonderful. Deep and secret are the Councils of Traytors, and yet we see, let them be never so cautious, whatever Method they may take to disguise their Treason, whether subtle Language may be used to carry in their Conspiracy, yet the same Providence that has placed his sacred Majesty upon the Throne of his Ancestors, will continue to guard and protect him, and to buffet the Devices of his Enemies. Upon the whole, Gentlemen, we think we have fully proved the Treason and the Overt-Acts.

laid in the Indian Court. Whomsoever may remember it, was used from the Evidence, that the Prisoner had conspired, conspired and agreed to raise and levy War without the Countenance, and under the King, that he has written to and received from his Correspondents Abroad many Letters to procure foreign Assistance for that Purpose; and the Court will inform you, Gentlemen, that this is Treason in the Prisoner at the Bar.

L. C. Baron. Gentlemen of the Jury, Francis Francis shews himself of High-Treason, for compassing and imagining the King's Death; contriving to depose him from the Throne, and to advance the Pretensions of one to the Crown. And there are laid at the Indictment several Overt-Acts, one of which, that he conspired and agreed to raise an Insurrection and Rebellion against the King: And that for that Purpose he wrote Letters to divers Foreigners, to solicit and procure Arms, Men, and Money, and to raise an Invasion; and caused those Letters to be sent to divers Foreigners in France.

This is the Substance of the Indictment; and to prove this, it has been shewn you how he was taken and seized. And Mr. Jones tells you, it was upon the Nineteenth Day of September, 1745, that he had a Warrant so issue him; That he went with another Messenger, since deceased, whose Name was Wilson, and found him and a Woman in Bed. The Prisoner was a single Person. He tells you there was a Closet in the Room, the Door being he had said to be opened; and, in upon a Shelf, found a Parcel of Letters lying upon it, wrote in French, and in a Book, that had been produced, lying upon the Desk. He put up the Letters and the Book together, when he had so done, says the Prisoner, *It was so you told that Book for? That is my Copy-Book of my Letters to my Correspondents, and there is nothing material in that.* The Messenger took notice of a Sort of Writing at the End of it, that he knew it by again, and the Prisoner said, *You saw Sir's Writing.* It has been deduced to you, that the Book and the Letters that have been produced in you, are the same Book and Letters that were seized in the Prisoner's House, and carried to my Lord Youngblood's Office.

Mr. Wolfe tells you on what Day the Warrant was granted, and that the next Day the Book and Papers were delivered to him by the Messenger; that he looked over them with Mr. Bechly, and then he carried them to my Lord Youngblood; and that the Prisoner allowed the Letters upon his Examination before my Lord, and said, *This is my Book of my Letters to my Correspondents: five of them were retold by me, and the rest of them by my Son.* This is proved to be the same Book; and upon Perusal of the Letters, Mr. Wolfe proves them to be the same that were brought to him by the Messenger.

Mr. Bechly tells you that when these Letters were brought to the Office, he read several of them; and that when Mr. Wolfe was called, they were left with him, and he copied several Passages out of them. His Book is now present at the Prisoner's Examination, and can't say any thing as to the Book's being shown to him, because he was busy in taking the Examination; but says, that Francis, upon his Examination, would not be sworn upon a New Testament, but took a Book out of his Pocket, and was sworn upon that, that his Examination was true. He subscribed his Name to it, and it was read over to him. It was objected, that he was refused the Liberty of reading it: But there was no such Thing; he might have read it, and it was not to him, and he was never refused to read it.

My Lord Youngblood informs you, that he having received an Information, that a Correspondence was carried on between the Duke of Arundel, the late Duke of Ormond, and Mr. Harvey, and that Letters pass between them by means of the Prisoner, there were Orders sent to the Post-Office, to stop all Letters directed to Francis; that the Prisoner being examined before my Lord, owned all these Letters. And says he, *As to my own Letters, I appeal to my God which will show them, there are so many evidences that he owned this Book to be the Book of his Letters. What others write to me, I am sure, can't effect me; but as for my own Letters I appeal to my God.* My Lord says, there seemed to be a Disposition in him to tell all he knew, and he offered to explain the Letters then produced; that at the next Time Mr. Harvey's Letter was produced, and he explained the Figures in that Letter; and my Lord Youngblood then took him to be sincere, but he found afterwards, that he had not discovered all he knew. These Letters were laid upon the Table during the Time of the Examination, and were taken back again. The Prisoner asked several Questions about Money being given him, and more offered to him, by my Lord Youngblood. My Lord gave an Account of that, and says, that the Prisoner pretended to be in a miserable Condition, his Wife Harvey, and he begged hard for something, pretending to be miserably poor; and as he was going away, as mere Alms, my Lord gave him three, or four, or five Guineas, not as any Discouragement to him to swear any Thing, but as mere Alms, because he begged for help, and pretended to be in so miserable a Condition. Then he desired to know, whether it was not proved to him, that his Examination should not be produced against him. He was told, that if he was candid there should be no Advantage taken against him, and that my Lord would intercede on his behalf; and if he had been so, no doubt, my Lord would have done what he could to incline the King to be favourable to him; but after this, my Lord found he knew a great deal more than he would discover. His Wife never interceded to my Lord, and pretended she could prevail upon him to discover, if the night he was taken to him; but after this, when he was in Newcastle, a Letter was found directed to his Wife, in which he said, he was with good Company in Newcastle, and hoped he had said nothing against Mr. Harvey which would prejudice him; and upon this, my Lord Youngblood did not think him to be sincere as he pretended to be at first. Mr. Bechly proves that Letter to be of his Hand-Writing. So it he defines his Wife to make herself easy, *They were all Tories that were there; he had good Company, and the Bishop will be on his Side in a Fortnight.* What Hushins could he mean? Nothing but that about which this Correspondence was, and God will assist us; I know nothing against Mr. Harvey, he is only justified to be for the Affairs, he was well known to be so before; and if all were here that are so, he believed those Parts of the Nation would be over. So that he had a good Opinion of the Cause, and that it would be over in a Fortnight.











Purvis, presented in the Chair placed on the second Step of the Throne.

Who having again made a Reverence to the Lords, he seated himself in the said Chair, and gave the Staff to the Black-Rod on his Right-Hand, and the Purple-velvet Banding on his Left.

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thither on the Account of Traffic, could be made, or any other thing whatsoever; And also, unless full Power be granted unto the Subjects of the King of Great Britain, and the said Emperor, to exercise and enjoy all the same Privileges, Rights, Immunities, and Franchises of Commerce by sea and Land in Spain, Portugal, the Indies, and all Lands and Places, which the King of Spain hath, or shall hereafter possess, at the Time, or Death, as well in Europe as elsewhere, which he had and enjoyed, or which the Subjects of both, or either of them, by any Right acquired by Treaties, Agreements, Customs, or otherwise, may whatsoever, may have used and enjoyed before the Death of the late King of Spain: That in the said Time that the said Agreement of Peace shall be made, the Confederates shall agree amongst themselves about all the Things that they shall think necessary for maintaining the Navigation and Commerce of the Subjects of his Majesty of Great Britain, and the States General, the Lands and Dominions they may possess, and that are possessed by the late deceased King of Spain, and also in what Manner the States-General may be secured by the aforesaid League of Barrier, and whereby his Majesty King William, and the States-General, jointly considered that France was then become so formidable from the Accession of Spain to the Duke of Anjou, that, in the Opinion of all, it was, at that Time, in Danger of losing her Liberty, and undergoing the heavy Yoke of Universal Monarchy; and that the safest Means of obviating that Danger, were to oblige the King of Great Britain from the same General Treaty, which Purpose all imaginable Difficulties would be made, they therefore thought it necessary to unite in the following Manner, and a public Treaty, and to that end a Decisive Treaty and Alliance was considered and concluded, and since then, in or about the Month of November, One Thousand Seven Hundred and One, when it was, amongst other Things, agreed, That in case the said High Allies should be jointly engaged in War by Reason of this Decisive Alliance before-mentioned in the 5th Article, as on any other Account, then shall be, an Offensive, and Defensive, and perpetual Alliance between them, and with those with whom the War shall be, and all their Forces shall be employed by Sea and Land, and they shall act in Conjunction and separately, as it shall be agreed between them. That since, in the Alliance with the Emperor made in September last, particular Care was taken of the Recovery of the Spanish Low-Countries, out of the Hands of the most Christian Kings, the said Confederates capably engage to aid one another with all their Forces for the Recovery of the same. And in regard the principal Interest of the said Confederates consists in the Preservation of the Liberties of Europe, the before-mentioned Treaty with the Emperor shall be faithfully and sincerely executed, and both Sides shall guarantee the same, and use their Endeavours to confirm and render it more firm from Time to Time: That in making Peace, particular Care shall be taken of the Commerce and Traffic of both Nations, as also for their Security, and well in regard to the Low-Countries, as the Countries adjacent: That when the War is begun, the Confederates shall act in concert, according to the seventh and eighth Articles of the Treaty of the Third of February in the Year of our Lord One Thousand Six Hundred Seventy-seven, Eight, between England and Holland, which is hereby renewed and confirmed; and no Peace, nor Truce, or Suspension of Arms, shall be negotiated or made, but according to the ninth and tenth Articles of that Treaty, by which it was agreed, that when the two Allies come once to an open War, it shall be lawful for neither of them afterwards to come to any Cessation of Arms with him who shall be declared and proclaimed an Enemy, without it be done conjointly, and with common Consent: That no Negotiation of Peace shall be made, or any Truce, or Suspension of Arms, without the Concurrence of both: That each Ally shall conjointly, and from Time to Time, impart to the other every thing that passes in the said Negotiations, and shall stipulate with the common Enemy for the same Rights, Immunities, Exemptions and Privileges for his Ally as he does for himself, if he be the said Ally; do not agree to the contrary. And whereas the French King having got Possession of a great Part of the Spanish Dominions, exercised an absolute Authority over that Monarchy, having forced Andalus and the Spanish Low-Countries by his Arms, and made himself Master of Cadix, of the Entrance into the Mediterranean, and of the Ports of the Spanish West-Indies by his Fleets, every where designing to invade the Liberties of Europe, and to obstruct the Freedom of Navigation and Commerce, and instead of giving the Satisfaction that ought justly to be expected, had proceeded to further Violence, and had taken on him to declare the pretended Prince of Wales King of England, Scotland, and Ireland, and had also succeeded Spain to coexist in the same Affair; her late Majesty Queen Anne taking notice, that she found herself obliged, for maintaining the Public Peace, or vindicating the Honour of the Crown, and to prevent the Mischiefs which all Europe was threatened with, to declare War against France and Spain; did accordingly, in the Month of May, One Thousand seven Hundred and Two, in the most public and solemn Manner, declare War against France and Spain; and in the said Declaration, placing her entire Confidence in the Help of Almighty God, in so just and necessary an Undertaking, declared, That the world, in Conjunction with her Allies, would produce the same both by Sea and Land, being assured of the ready Concurrence of her subjects, in a Cause they had so openly and bravely espoused. And his Imperial Majesty and their High Mightinesses, pursuant to the Treaties above-mentioned respectively, in or about the said Month of May, One Thousand seven Hundred and Two, did likewise declare War against France and Spain. And whereas the Kings of Portugal and Prussia, the Dukes of Hannover, Saxony, Tuscany, Modena, Palatinate of the Rhine, the Duke of Savoy, the Prince of Hesse, the Duke of Württemberg, the Duke of Saxe, and the Duke of Brunswick, the Counts of Hesse and Nassau, and of the Upper Rhine, the Bishops of Mecklenburg and Cassel, and other Princes and Powers, being invited by the said Grand Alliance, and relying on the Faith thereof, did afterwards become Parties to the said Confederacy War against France and Spain; and in the Treaty entered into in or about the Month of May, One Thousand seven Hundred and Three, between his Imperial Majesty, the Queen of Great Britain, the States-General, and the King of Portugal, in or amongst other things, expressly stipulated, that







Cardiffine Manner from England to France, and did communicate the said Propositions of Peace to the Ministers of France, in which the particular Interests of Great Britain, as well as the common Interest of Europe, were mutually bound: And in Manifestation of his said Design to exclude her Majesty's Allies from their just Share in the said Negotiation, an express Article was inserted in the said Propositions, by the French and Advice of him the said Robert Earl of Oxford and Earl Marlborough, that the Secret should be inviolably kept till allowed to be divulged by the mutual Consent of both Parties, although the French King had in the Propositions signed by Monsieur de Tercy, and transmitted in the Month of April preceding, offered to treat with the Plenipotentiaries of England and Holland alone, or jointly with those of the Allies, at the Choice of England. By which treacherous and dangerous Advice he the said Robert Earl of Oxford and Earl Marlborough did not only conceive and set on foot a Negotiation of Peace more advantageous to France than even France itself had asked, but thereby did put it into the Power of the common Enemy to create insupportable Jealousies and Divisions between her Majesty and her faithful Allies, and to destroy that Confidence which had so long and so successfully been cultivated between them, and which was so necessary for their common Safety.

#### ARTICLE II.

That the French King laying hold of the said treacherous Occurrence, set on foot in Manner aforesaid, did in or about the Month of August or September, in the Year of our Lord One Thousand Seven Hundred and Eleven, send over Monsieur *Mogoyer* into England to carry on a clandestine and separate Negotiation of Peace, which being made known to him the said Robert Earl of Oxford and Earl Marlborough, he did afterwards in the said Month of September One Thousand Seven Hundred and Eleven, secretly and unlawfully, without any Colour of Authority, even, craft, and treat with the said *Sieur Mogoyer* on the Negotiations of Peace between Great Britain and France; and therein he did advise and promote the making a private and separate Treaty or Agreement between the said Crowns; which said Treaty or Agreement was afterwards, with the Privy Council, and Advice of him the said Robert Earl of Oxford and Earl Marlborough, agreed, concluded on, and signed by the said *Sieur Mogoyer* on the Part of France, and by the Earl of Dartmouth and Henry Sir John, Esq. two of her Majesty's Principal Secretaries of State, in behalf of her late Majesty, by virtue only of her Majesty's Sign Manual under the Signet, and without the least Knowledge or Participation of the Allies. In which Treaty the immediate Interests even of Great Britain are given up to France, and the Duke of Savoy is admitted to be King of Spain; an express Stipulation being therein made with the said *Sieur Mogoyer* in the Name, and (as it is alleged) pursuant to Powers from King Philip as King of Spain: Whereby he the said Robert Earl of Oxford and Earl Marlborough did not only assume to himself Royal Power, in taking upon him to meet and treat with the Enemy without any Authority or Powers from her Majesty; but did what in his lay to subvert the ancient and established Constitution of the Government of these Kingdoms, by introducing illegal and dangerous Methods of transacting the most important Affairs of the State; and by which private and separate Treaty, he the said Robert Earl of Oxford and Earl Marlborough did what in him lay to dissolve and cancel the many solemn Treaties her Majesty then stood engaged in as her good and ancient Allies, and whereby her Majesty, even before any thing was finally settled for the Safety or Advancement of her Kingdoms, was brought to this fatal Dilemma: either to submit to the Dictates of France in the Progress of the said Negotiation, or, in consequence of a breach of National Faith being divulged by the Enemy, from thence to lose all future Confidence of her good Allies.

#### ARTICLE III.

That the said Robert Earl of Oxford and Earl Marlborough, the better to disguise and carry on the aforesaid private, clandestine, and dangerous Negotiations, did, together with other evil-disposed Persons, this is high Treason under her Majesty, conceive and advise the preparing and forging a Set of General Preliminaries, intitled, *Preliminary Articles on the Part of France to come in a General Peace*; and that the same should be signed by the said *Sieur Mogoyer* only. And the same being to prepare and sign'd by the said *Sieur Mogoyer*, he the said Robert Earl of Oxford and Earl Marlborough did, contrary to his Duty and Trust, unlawfully advise her late Majesty that the same should be, and accordingly they were received by her Majesty, and communicated to the Ministers of the Allies then residing in England, as the Group of a General Negotiation of Peace; and as if the same were the only Transmissions that had passed on this Subject between Great Britain and France. And to this end, the private Treaty, signed as aforesaid by the Earl of Dartmouth and Mr. Sir John on the Part of England, and by the said *Sieur Mogoyer* on the Part of France, was by the evil Advice and Contrivance of him the said Robert Earl of Oxford and Earl Marlborough, and others, unlawfully and treacherously conceal'd not only from all the Allies, but even from her Majesty's Council and her Parliament. And he did further advise her Majesty not only to accept the said General Preliminaries, but in her Name, and by her Authority, to communicate the same to the States-General, as a sufficient Foundation wherupon to open the Conference of Peace with France. And the more effectually to cover from the States-General the pernicious Steps which his evil Influence had engag'd her Majesty in with the common Enemy; certain Instructions were prepar'd, and, by his Counsel and Advice, were sign'd by her Majesty, and delivered to the Earl of Strafford, her Ambassador to the States-General; wherein the said Earl of Strafford is directed to represent to the Preliminary of Holland, and to such others as shall be appointed to confer with him, that when her Majesty had receiv'd in May last, by his Excellency's Dispatch, an Account of the Sense which those among them, who were at that Time in the Secret, had of the Courses made by France for setting a general Negotiation of Peace again on Foot, and of the Answer which it was desired might be return'd to the Propositions signed by Monsieur de Tercy, her Majesty did immediately acquaint the Enemy, that their Offers were thought by her and by the States-General neither particular nor full enough,

and therefore that her Majesty did wish, that they should form a different Project of such a Peace as they were willing to conclude. Whereas such Influence had been made to the Enemy on her Majesty's Behalf; on the contrary, notwithstanding her Majesty had declar'd that the Propositions of Monsieur de Tercy were thought by her and the States-General neither particular nor full enough, yet without any further Explanation from the Enemy, her Majesty was prevail'd on, in manner aforesaid, to send over Propositions to France as general and enduring, and in all respects as destructive to the Interests of Great Britain and her Allies as the Propositions of Monsieur de Tercy. And the said General Preliminaries, communicated to the States in manner aforesaid, were calculated only to amuse and deceive them into a General Negotiation with France. And in the Particulars aforesaid, as well as in the several others, the Instructions contain'd Matters either false or grossly perverting a true Enquiry. By which most wicked Councils of him the said Robert Earl of Oxford and Earl Marlborough, that unquenchable Truth and Sacredness which by the Laws of Nations ought to accompany and constitute the Instructions of Public Ambassadors to Princes in Friendship and Confederacy against the common Enemy, was most wily prostituted to the most dangerous Purposes, to deceive and mislead her Majesty's good Allies, in Matters of the greatest Importance to their own Interests and the Interests of these Kingdoms; the Honour of her Majesty's sacred Person, and of the Imperial Crown of these Realms, which had been raised to the highest Pitch of Glory abroad, and had been justly bid in Veneration with her good Allies, was scandalously debated and betrayed; and the Royal Faith, by the wicked Advice of him the said Robert Earl of Oxford and Earl Marlborough, was made the Instrument to advance the Interests of the common Enemy.

#### ARTICLE IV.

That whereas the Earl of Strafford, pursuant to the said Instructions, had communicated the Preliminaries signed by Monsieur *Mogoyer* only to the States-General, who being justly alarmed at the perfidious Intention made on the Part of her Majesty, that Conferences should be opened on Propositions as general and enduring as those so lately offer'd by France, and signed by Monsieur de Tercy; and that the High Mightinesses have upon unsuccessful in their Remonstrances to the Earl of Strafford against opening the Conference upon the said Propositions, did send over Monsieur *Bay* their Ambassador to represent to her Majesty, to call the Hazard of meeting the Ministers of France before the said General Articles were first settled by special Plenipotentiaries, or at least explained by France, and made specific, as likewise the Advantages to the Enemy, who being but one Body, were induced by one Council, and drench'd by one Power; whereas the Confederates consisted of several Powers, whose Interests are not only distinct, but in many Cases contrary to each other, whereby the French would have a fair Opportunity to divide the Allies, when it would be impossible for them to break in upon France; and further to represent, that the Propositions themselves were in some Instances very prejudicial, particularly in the Articles of Commerce, *Dunkirk*, and the Union of the Crowns of France and Spain. All which Representations of the said Monsieur *Bay*, by the evil Influence of him the said Robert Earl of Oxford and Earl Marlborough, and others, were render'd effectual; but in order to prevail upon the States-General to open the Conference upon the said General Preliminaries, by the Management and Contrivance of him the said Robert Earl of Oxford and Earl Marlborough, and others, an Excuse was taken to decline to Monsieur *Bay*, as a Committee of Council, in her Majesty's Name, her constant Affection and good Disposition to their State, and to the promoting their Interest, and to treat with their High Mightinesses with a perfect Confidence and Harmony: And as the same time he the said Robert Earl of Oxford and Earl Marlborough did then falsely and maliciously declare, or was privy to advising and countenancing, that it should be, and so it was declared, in her Majesty's Name, that she had made no separate Treaty with France, nor would ever make any, and that each of them should have Opportunity to make good their Propositions.

By which false, scandalous, and dishonourable Affirmance, by the said Robert Earl of Oxford and Earl Marlborough did not only highly dishonour her Majesty, by whose Privity the said private Treaty with France had been before that Time concluded and signed; but their High Mightinesses, the good Friends and ancient Allies of her Majesty, were gail by abused, and thereby induced to enter into a Negotiation with France, dangerous in itself, and so fatal in its Consequences.

#### ARTICLE V.

That her sacred Majesty Queen Anne having in due Form of Law, and under her Great Seal, continued the Right Reverend John Lord Bishop of Bristol, and the Earl of Strafford, her Plenipotentiaries, with full Power, to meet, treat, and conclude with the Plenipotentiaries of the Confederates, and those whom the French King had on his Part deputed for that Purpose, the Conditions of a good and general Peace, that shall be safe, honourable, and, as far as is possible, agreeable to the reasonable Demands of all Parties; he the said Robert Earl of Oxford and Earl Marlborough not contenting himself to abuse the Royal Authority, to the Detraction of the States-General, the sacred Allies of the Queen, but intending the Universal Prejudice of his Imperial Majesty, and all the Allies of these Kingdoms; and thereby the more successfully to carry on the Measures of France, wherein he was then engaged, contrived and prepar'd Instructions, or was privy to, countenancing and advising the same, for her Majesty's said Plenipotentiaries, which he was prevailed upon by the said Robert Earl of Oxford and Earl Marlborough's evil Council to sign, and the first were delivered to the said Plenipotentiaries, wherein among other Things they are instructed to the Effect following, viz. If it shall be thought proper to begin by the Disposition of the Spanish Monarchy, you are so much that the Secretary and reasonable Satisfaction which the Allies expect, and which his most Christian Majesty has promised, cannot be obtained, if Spain and the *West-India* be allotted to any Branch of the House of *Stuart*: Whereas the said Robert Earl of Oxford and



and Earl Marjorie has at that Time privately and treacherously negotiated and agreed with the Ministers of France, that Spain and the Kingdoms should remain in a Branch of the House of Bourbon; and had prevailed on her sacred Majesty to be Party to the said private Treaty, wherein she is manifestly implicated. And the said Pleinpotentiaires are further intrusted, in case the Enemy should object, as the Imperial Majesty might, that the Duke of Savoy shall continue on the Throne of Spain; you are to inform, that these Articles, as far as they extend, are not binding to France, but that they lay neither as serious Alliances under any positive Obligation; whereby the said Robert Earl of Oxford and Earl Marjorie have carried into a Confederacy and Coalition even with the Ministers of the Enemy, and prevailed on her Majesty to give her Royal Assent thereon, the more effectually to impose on his Imperial Majesty and all the Allies, and to conceal the said secret Negotiations, and the said private Treaty that had been agreed on between Great Britain and France. And the said Robert Earl of Oxford and Earl Marjorie, in the Particulars before-mentioned, but in many others contained in the said Instructions, has brought a falling Speech on the Crown of Great Britain, and grossly violated the many Treaties wherein her sacred Majesty was then engaged to her Allies, to act in perfect Concert with them throughout the Negotiations of Peace.

#### ARTICLE VI.

That the Conferences of Peace being opened between the Plenipotentiaries of the Allies, and those of the Enemy, for the negotiating a general Peace from the mutual and most solemn Engagements amongst the Allies, not only to act in perfect Consistency with each other, but to promote their common Interest, and to obtain from the Enemy all just and reasonable Satisfaction; and a specific Explanation of the General Preliminaries having been given by the Enemy at Utrecht, wherein the Allies declared their respective Demands; by the Ambassadors of France, and the secret Encouragement and Concurrence of the Ministers of Great Britain, the Progress of the said public Negotiation was delayed and kept in Suspense, under Pretence of the Enemy's refusing to give their Answer in Writing; During which Time, the said Robert Earl of Oxford and Earl Marjorie again affirming to himself Royal Power in Derogation of the Royal Authority, on pretence of Peace with France, which was then designed under the Great Seal of Great Britain to her Majesty's Plenipotentiaries at Utrecht, and for the promoting the Designs of the Enemy to the apparent Destruction of the common Cause of her Majesty and her Allies, contrary to the known Laws and Constitution of this Kingdom, in direct Violation of the several Alliances her Majesty then stood engaged in, and in Opposition to the many Addresses given by her Majesty to all in Council, her Allies, and in Defence of the express Instructions given to the said Plenipotentiaries, was not only wanting in his Duty to her Majesty, as far as in him lay to have put an end to, and prevented any farther private and unlawful Negotiations with France, but did, with others his Accomplices, advise, concur, continue, and promote a private, separate, and unjustifiable Negotiation of Peace with France, directly from Kingdom to France, without any Communication thereof to the Allies; and in such private Negotiations did concert with the Ministers of the Enemy Terms of Peace highly prejudicial to the Interest of her Majesty and her Kingdoms, and of all her Allies, and whereby the good Effects of the said General Negotiations were entirely defeated.

#### ARTICLE VII.

That her sacred Majesty Queen Anne having been prevailed on by the false Counsels of him in Law, Robert Earl of Oxford and Earl Marjorie to accept of a Treaty with France, on the Supposition that the Spanish Monarchy should continue in the Possession of a Branch of the House of Bourbon; and at being acknowledged even by the French King in the General Preliminaries signed by Monsieur Miquoy, that the Excess of Power from the Re-union of the Crowns of France and Spain would be contrary to the good and general Republic of Europe: He the said Robert Earl of Oxford and Earl Marjorie having nothing in such view as the representing the common Enemy, yet always intending to cover the Intiguity of his Heart under specious Pretences and false Appearances, did wickedly and uncharitably advise and carry on a private and separate Negotiation with France, on the Subject of a Renunciation of his Right to the Kingdom of France by the Duke of Savoy, and that said Renunciation should be the Security against the Re-union of the two Kingdoms. And by the Influence of his evil Counsels her Majesty was prevailed on to accept and finally to conclude and ratify a Treaty of Peace with France, wherein the said Renunciation is taken as a sufficient Expedient to prevent the Mischiefs that thence might all Europe, in all the Crowns of France and Spain should be united upon the Head of one and the same Person; although he the said Robert Earl of Oxford and Earl Marjorie well knew, that a Memorial had been during the said separate Negotiation, transmitted by Monsieur de Terro, Secretary of State and Minister to the French King, to one of her Majesty's Principal Secretaries of State; whereby it was declared, that the said Renunciation would be null and invalid by the Fundamental Laws of France, which Laws were looked upon as the Work of him who had established all Monarchies, and which he only should abolish; and that no Renunciation thereof could destroy it: And if the King of Spain should renounce, they would deceive themselves that should receive it as a sufficient Expedient to prevent the Mischiefs proposed to be avoided. By which false and treacherous Counsels, he the said Robert Earl of Oxford and Earl Marjorie did not only betray the Interest of the common Cause into the Hand of the most formidable Enemy, but wilfully and maliciously abused the Power and Influence which he had obtained with her Majesty, so far as to engage her sacred Majesty, and the Honour of the Imperial Crown of these Kingdoms, to become Party with France in so fatal a Deceit.

#### ARTICLE VIII.

That her late Majesty Queen Anne having on the Seventh Day of De-

cember, in the Year of our Lord One Thousand Seven Hundred and Eleven, expressly recommended it from the Throne, that Provision might be made for an early Campaign, in order to carry on the War with Vigour, and as the best Way to render the Treaty of Peace effectual; in order to which, vast Supplies were granted, and Magazines provided at a great Expence for an early Campaign; and in pursuance thereof, her Majesty having sent her Generals, Lumley and Cadogan, to give early Assistance to her Allies of her former Lieutenants, and likewise expressly instructed her General, the Duke of Ormond, not only to renew the same Alliances and declare her Resolutions of pushing on the War with the utmost Vigour, but to concert with the Generals of the Allies the proper Measures for entering on Action; and the Confederate Army, which at that Time was the fastest and strongest that had been in the service since the whole Course of the War, and provided with all necessaries to act with Vigour, having marched, according to the Resolutions taken in a Council with her Majesty's General, almost up to the Enemy, with a great Superiority both as to the Number and Goodness of Troops, and animated with a noble Courage and Zeal to acquit themselves bravely; so that in all human Appearance, and with the Divine Assistance, which had appeared so visibly for them on many other Occasions, they would have been able, either by Battle or Siege, to have gained great Advantages over the Enemy, to have bettered the Affairs of the Allies, and to have facilitated the Negotiations of Peace: And the Ministers of France have since that Time, and especially represented to the said Robert Earl of Oxford and Earl Marjorie, and others his Accomplices, during their secret Negotiations, their just Apprehensions from the Bravery and good Disposition of the Confederate Army, by the said Robert Earl of Oxford and Earl Marjorie, having truly informed of the false Prospect, which, by the Blessing of God, the Army of the Confederates then had, of gaining new Conquests over the Army of France, and whereby they would have been enabled to have forced Terms of Peace, full, honourable, and lasting: In order to dissipate this comfortable Expectation of the Allies, and to give Success to his secret Negotiations with the Ministers of France, as a party to, confounding and advising, together with other false and evil Counsels, and together with them did advise and concert, that an Order should be sent in her Majesty's Name, to the Duke of Ormond in Flanders, to avoid engaging in any Siege, or hazarding a Battle till further Orders, although nothing had then been said in the said private Negotiations for the Interest and security of Great Britain; and although Philip King of Spain at that Time had not consented to the Renunciation of his Right to the Crown of France. And not contenting himself with having obtained that first Step, he highly advanced against the Cause of France, but being evidently determined to do all that in him lay to disturb the whole Confederacy, he the said Robert Earl of Oxford and Earl Marjorie, with others, was privy to, and did consent and advise, that Order should be sent to the Bishop of Bristol, one of her Majesty's Plenipotentiaries then at Utrecht, to take the first favourable Opportunity to declare to the Dutch Ministers, that her Majesty looked on herself then thus bound to be then under no Obligation whatsoever to them: Which two Declarations giving just Alarm to all the Allies, they represented to the Bishop of Bristol their general Dissatisfaction, and the inexpressible Consternation they were all in; that these Proceedings were to the irreparable Ruin of Europe. They urged Reason, Liberty, and the Link of Treaty, to show the Enormity of this Usage; and the secretest of their Unanimity on no account so much, as that they could not come to the Knowledge of their own Loss, which Representatives of the Bishop of Bristol did, at the Instance of the Allies, signify to one of her Majesty's Principal Secretaries of State, but their High Magnificence finding that all Appearances to the Ministers of Great Britain, and in particular to the said Robert Earl of Oxford and Earl Marjorie, were of no avail against France, and for the Interest of the common Cause, thought it necessary, in a manner the most moving and respectful, to address directly to her Majesty by the Letter of the Fifth of June, One Thousand Seven Hundred and Twelve; wherein expounding that great Surprise and Abhorrence at the two Declarations aforementioned, and finding it difficult to conceive how such Declarations, so prejudicial to the common Cause, given in Flanders without their Knowledge, and undoubtedly too without the Knowledge of the other Allies, could agree and consist with the Nature of an Alliance, and with those Alliances and Engagement her Majesty had so lately made; and not knowing how to reconcile it with the great Goodness and Kindness which her Majesty had always been used to them with, and not being able to conceive how such a sudden change could happen without their being, having carefully examined their own Conduct, and finding nothing therein that could have given Ground to her Majesty's Dissatisfaction, and having represented the visible and immediate fatal Consequences of the said two Orders, not only to the common Interest of her Majesty and the States, but to the whole Confederacy and to the Protestant Religion; they beseeched her Majesty, with all the Respect, and all the Earnestness they were capable of, that she would not persist in the Declarations made by the Bishop of Bristol, and would be pleased to revoke the Orders given to the Duke of Ormond; and would authorize him to all others given to the Agents of the Enemy of the War, and the Advancement of the common Cause should recede. Notwithstanding which, he the said Robert Earl of Oxford and Earl Marjorie, being acquainted with the said Representations of the States, was a only wanting in his Duty to her Majesty, and to his Oath, and the great Trust reposed in him, in not advising, as he ought to have done, her sacred Majesty to have his regard to the said several Instances made to her; but persisting in a desperate and destructive Measures for the Advancement of the Interest of the common Enemy, did afterwards advise her Majesty to disengage and reject the same; and did countermand, encourage, a rife, and provoke the said private, separate, and wicked Negotiations with France, without any Participation of the Allies, contrary to all her Majesty's Engagement, and to the apparent Ruin of the common Cause; by which several wicked and perfidious Counsels, the Progress of the victorious Army of the Confederates were stopped, and an Opportunity lost for conquering the Enemy, the most favourable, in the Opinion of all the General Officers and the Quarter-Masters of the Allies, who were sent out to view the































her Majesty's sole and Entailment, with which her Majesty was pleased to honour him, he faithfully endeavoured to discharge his Duty, with the utmost Integrity, having always, with the truest Zeal, desired and endeavoured, as far as he could, to promote the Honour and Service of her Majesty, whole Aim he knew to be the Welfare of his Kingdoms, in the first Place, and, as far as the Judge's confidence with that, the common Good of her Alliance. In or about the Month of September, One Thousand seven Hundred and Ten, her Majesty (whose undoubted Privilege it was) thought fit to dissolve the Parliament then being, and to call a new One. In the Year One Thousand seven Hundred and Eleven, Propositions were made by France to her Majesty for Peace, without the Consent or previous Knowledge of the said Earl. Her Majesty, out of her Affection for her People, having it much at her Heart to establish Peace in her own Days, expected her Consent for the Disappointment of former Negotiations, and her earnest Desire to put a speedy End to the War, and so the Effusion of Christian Blood, and to ease her Subjects from the heavy Burthen of their Taxes. The said Earl does acknowledge, that he thought a Peace was very much for the Interest and Advantage of Great Britain: And, in his humble Opinion, the most favourable Juncture for entering into any such Treaty of Peace, was immediately after the Victory gained by her Majesty's Arms, in the Year One Thousand seven Hundred and Six. For, after the Reduction of the Dominion of the Election of Bavaria and Cologne, with other important Conquests in Germany, after the entire Destruction of three great Armies of France, in Flanders, Spain, and Piedmont, after the Allies had recovered the Spanish Netherlands, Milan, and other Territories in Italy, it might have been hoped, upon the great Difficulties in which the Enemy then was, a just and reasonable Peace would have been substantially made to much as at that time gained from the Enemy, and to much more as his Probability had been yielded by them, as would have fully answered the Ends of the Grand Alliance. Peace was at that Time sought by the Enemy, and the said Earl, who had the Honour to be one of the Principal Secretaries of State, was then advised the carrying it in. And his humble begs leave to observe, that the War had been continued upon to unequal a Foot, that the Butches of it annually cost and, and at the Time when these Proposals were made by France, was become almost insupportable. It had indeed been stipulated by the Grand Alliance, that the Allies should assist one another with all their Forces, according to a Specification to be agreed on in a particular Convention for that Purpose: But it does not appear any such Convention was made, although then as the Heads of Commerce were intended by one of the Principles of the Treaty of Union, that the said Earl, that by the Treaty of Commerce adjusted with the States, England was to furnish two Parts of Six by Land, and the States the other three; and England was to furnish five Parts of eight by Sea, and the States the other three: But the States not always allowing themselves to be under an Obligation to furnish such Proportions, gave Occasion to England's bearing an unequal Part in the War, with respect to the Allies. The States had that pious Regard to the frugal raising of their Affairs, that they frequently refused they ought not to be paid beyond their Ability, and made it difficult to the said Earl to find out any Quota, or Proportion, which they thought improper for them to furnish. In the mean Time the Charge of the War was greatly increased upon the Subjects of Great Britain: In the Year One Thousand seven Hundred and Two, it was under Four Millions; from thence it gradually increased till the Year One Thousand seven Hundred and Six, the Charge of which Year amounted to above Five Millions and an Half, and still advancing, till the Year One Thousand seven Hundred and Eleven, it was then grown to near Seven Millions; and, at the same time, there was a Debt contracted, not provided for by Parliament, amounting to above Eight Millions: In the Year One Thousand seven Hundred and Eleven, when the War was involved, under Three Millions per Annum; and the Revenues of Great Britain were under such Anticipations, that it was found difficult to raise above Two Millions and an Half for the growing Service, to be paid within the Compass of the Year. So that, when the Duties and Difficulties upon Trade, and the Continuance of the Taxes upon Land, which had lain so heavy above Twenty Years, are considered, the said Earl believes it could not be thought for the public Interest to prolong the War, without an absolute Necessity. During this Time the States had managed with so good Economy, that the said Earl had not heard of any additional Duty laid upon Trade, from the Year One Thousand seven Hundred and Two, to the Year One Thousand seven Hundred and Eleven. And what Acquisitions were made upon the Continent, during the Continuance of the War, that at the Expense of British Blood and Treasure, accrued to the Share of the Allies; and the Dutch, being under no Prohibition of Commerce with France, had a further Advantage of the British Merchants, in respect to a free Trade. Altho' the Princes of the Empire were engaged by previous Treaties to furnish their Quota's to the common Cause, yet when they were often invited to do so, they alleged in Excuse, that they were obliged to pay more in respect to their own Expenses, were to the Pay of the Queen of Great Britain. The Emperor left it to her Majesty to provide for their Troops, which by the Treaty of Vienna, in the Year One Thousand seven Hundred and Three, he was to furnish. The King of Portugal not only acquitted the Proposition of Twelve Thousand Foot and Three Thousand Horse, which by the said Treaty it was to provide at his own Expense, but even refused to permit the Eleven Thousand Foot and Two Thousand Horse, for which he had a Subsidy from her Majesty, to be paid by Portugal, according to an Article of that Treaty; and, when pressed to furnish his full Number of Troops, alleged his inability, for want of that Part of the Subsidy which the States ought to have paid him: So that, during the whole Charge of the War in Spain was left upon her Majesty, the States having sent few or no Troops thither, after the Battle of Almonacid; and all the other Allies being likewise deficient in their Propositions. This was the Condition of Affairs, with respect to the Charge of the War; nor did there arise, from the then Situation of Affairs, any more promising Prospect, with regard to the Event: For, although it had pleased God to bless her Majesty's Arms with wonderful Success, it was the said Earl's most sincere Regret; yet it did not appear, that after the Year One Thousand seven Hundred and Six, our Successes in

other Parts had corresponded our Success in Spain; for after two great Battles, wherein we had been very victorious, after our Army had been twice obliged to retire from Madrid, and after the taking the British Troops at Badajoz, the Breach of Spain (which was the main Article that started the Conclusion of the Peace at Gertruydenberg) turned almost desperate, especially since the End of the Year 1716, by the plentiful Victories and Harassments, had well nigh recovered the Effects of the Fatigue; and since since the Allies at the same Time made pressing Instances for recalling Part of their Troops, as they had done frequently during the Course of the War; from whence it appears how just the Grounds were, upon which both Houses of Parliament represented to her Majesty, that the War had been severely carried on, and that it had become insupportable. And the said Earl humbly begs, he shall not be thought to have deigned (in) Diservice to his Country, or, in such a Condition of Affairs, he did not dissuade her Majesty from persisting in the Overture of Peace made to her from France; or if, during the Negotiations, he was unavailing, by Corresponding, with her Majesty's Knowledge and Approbation, in any Course concerned therein, to rectify any Mistakes, or contribute in any Measure towards the Conclusion of a general Peace. But the said Earl believes, that, in all the Negotiations towards such Peace, the Allies had such Knowledge and Communication of all Measures therein taken by her Majesty, as the Treaty her Majesty then engaged in required: That the Propositions transmitted from France the 4th April 1713, were immediately communicated to the Privy Council, and the Council of Ministers: That her Majesty did at the same Time assure of her Resolution to act in Consent with them, in making Peace, or in making War. That when the States had expressed their Discontent equal with those of Great Britain for a general and lasting Peace, she had declared, that they were ready to join in proper Measures to procure it, and desired France might explain still more particular Reasons for the whole Negotiation, in which her Majesty endeavoured to give such Explanations, and afterwards communicated them to the Council. And if her Majesty thought it not expedient to proceed in the making of a Preliminary Treaty, which had proved to be ineffectual in the Years 1709 and 1710, she thought it might be sufficient, upon the Advice given by a Minister of France, by his Sovereign's Command, to make a new Overture for a Peace; the said Earl humbly hopes, that the Privy Council will appear to be so far from being an unreasonable Deviation from the Methods of former Treaties as to think, that it will be just to give the same Precedents of such Treaties. The said Earl can assure, that, if he was consulted by the Privy Council, he would have given his most sincere Attention to obtain a general Peace for the Welfare of the Subjects of her Majesty and her Kingdoms, and such as might give the most Satisfaction to her Allies, and answer all the Obligations her Majesty was under, by any Treaty with any of the Confederates, and such as were necessary to himself that he hath, in any respect, transmitted that Duty, which, as a Privy Counsellor, or Officer of State, he did owe to her Majesty, or to the Public. He is not insensible that many of the Articles, whereof he stands charged, are complicated with such Circumstances, as may render it difficult for him to acknowledge from Facts alleged, without acknowledgments, or inferences, to acknowledge, those Circumstances or Inferences. And, as he is not conscious to himself of being guilty of any Crime he stands charged with, so he takes it to be agreeable to the common Course of Proceedings of this Nature, and to your Lordships Justice, that he should not admit any Circumstances which may tend to the Accusation of himself. He therefore begs leave that he may be allowed to distinguish between the Acts themselves, and the Inferences drawn from them; and that whatever he acknowledges any Fact, he may be understood to acknowledge those Circumstances which are in the Articles deduced from it, which it shall appear that the said Earl was not the Author and Design of the said Earl, or is the necessary Result of any Act he had done.

In answer to the First Article, the said Earl saith, that he always had the greatest Regard to the Honour and Safety of her late Majesty and her Kingdoms, so all the Engagements he was under to the Allies of this Nation, and to the common Liberties of Europe; that he never was devoted to the Interest or Service of the French King; that he is not conscious to himself of having acted, whilst he had the Honour to be her late Majesty's High Treasurer, or one of her most Honourable Privy Councils, contrary to his Oath, or in Violation of his Duty and Trust, or with Disregard to, much less Defiance of any Treaties in the said Article mentioned; the Advice of Parliament, her Majesty's Declarations from the Throne, or any mutual Affurances which had been made or renewed between her Majesty and the States to act in perfect Consent with each other in making Peace or in making War: And he solemnly desires, that in or about the Month of July or August One Thousand seven Hundred and Eleven, or at any other Time, he did form any Conspiracy or Confederacy to sit on a Peace, separate, dishonourable or defective Negotiation of Peace between Great Britain and France; nor doth he know of any such Conspiracy or Confederacy formed by any of her Majesty's Privy Council, or that such Negotiation was at any time set on Foot. But the said Earl saith, he doth believe, that about the Month of April One Thousand seven Hundred and Eleven, her late Majesty did receive from France some Proposals, in order to sit on Foot a Treaty for a general Peace, signed by Monsieur de Torcy, Secretary of State to the most Christian King, which, as he believes, were immediately communicated by her Ambassador in Holland to the States-General: Whereupon, as he has been informed, they charged her Majesty for her Confidence in them, declared themselves to be weary of the War, and ready to join in any such Conspiracy or Confederacy, which they thought proper for obtaining a good Peace, and that they hoped her Majesty would bring the Matter to explain more particularly the several Points contained in the above-mentioned Proposals, or to that Effect; and that after such Request her Majesty sent Ambrose Prior, Esq; to the Court of France, in order to obtain as full and ample an Explanation as he could of the first general Offer: But the said Earl denies that he did advise her Majesty to send the said Prior to the Court of France, to make Proposals of Peace, without communicating the same to her Allies; or that the said Mr. Prior did, by his Advice or Privy, com-







of her and her People, and is not ashamed to confess that he ever gave any Countess, whereby the French and Spaniards which ought to be considered as the Infringers of public Ambassadors in France (those and Confederacy, against the common Enemy, were in any Firmship and Confederacy, or the Honour of her Majesty and of the Imperial Crown of Great Britain in any form detailed or beset; And he humbly hopes, assistance can be given, wherein the Royal Hand of her late Majesty was made the Instrument to advance the Interest of the common Enemy.

In answer to the Fourth Article, the said Earl doth not remember what Propositions were made by Monsieur *de St. Pierre* to her Majesty in relation to the Propositions in the said Article mentioned, but faith, That if any Propositions were made, the same were not rendered inefficual by any Influence of the said Earl. And the said Earl doth admit, that at a Conference of Council there might be made some Declaration in her Majesty's Name re Monsieur *de St. Pierre* to the Effect in the said Article mentioned; but doth not admit that any such Declaration was made by him the said Earl, nor by his Management or Contrivance. And the said Earl believes, that what was so declared to the said Monsieur *de St. Pierre*, was agreeable to Truth and to the real Sentiments and Intensions of her Majesty; and that he knew what the said Articles, signed by Monsieur *de St. Pierre*, and accepted by the said Lord *Donnaud* and Mr. *de St. John*, if any such were then signed, were inconsistent with such Declaration, or how her Majesty was thereby embarrassed, or her Allies abused, or that any Negotiation was thereby made with France was either dangerous to itself, or fatal to its Consequences.

In answer to the Fifth Article, the said Earl admits, that her late Majesty *Queen Anne* did in the Form of Law, and under her Great Seal, constitute the Right Reverend *John Lord Bishop of Bristol*, and the Earl of *Stratford* her Plenipotentiaries, with full Power to treat, treat and conclude with the Plenipotentiaries of the Confederates, and that when the French King should on his Part depose for that Purpose, the Conditions of a good and general Peace, that should be fair, honourable, and as far as was possible, agreeable to the reasonable Demands of all Parties, and believe Instructions were prepared and delivered to them, wherein they were instructed, among other Things, in the Effect in the said Article first set forth; and is fully persuaded, that when the said Plenipotentiaries were to be introduced to treat, that *Spain* and the *West-Indies* should not be referred to the House of *Bourbon*, so *Treaty* had been negotiated and made, that *Spain* and the *West-Indies* should remain in a Branch of that House. And he has Reason to believe, that at the Time when the said Instructions were given to her Majesty's said Plenipotentiaries, there was full Ground to believe, that King *Philip* would be induced to abandon *Spain* and the *West-Indies*, and content himself with the Dominions of *Italy* and the Kingdom of *Sicily*: And he believes he may so far depend on his Majesty, as to say, that he heard the late Queen declare, the belief of the said King *Philip* had of succeeding to the Crown of *France*, would be in Indulgence to him to be safe with the Alliance. And it seems probable, that the Addition of the Dominions of *Italy* to the Crown of *France*, in Case King *Philip* should succeed to it, would be attended by the French Court as a Thing more to be desired by them, than that *Spain* and the *Indies* should remain in the Possession of a younger Prince of the House of *Bourbon*, under the Condition of his renouncing the Right he would have to the Crown of *France*, if the eldest Branch should fail. These seem to him to have been her Majesty's Views at the Time when the said Instructions were given to the Bishop of *Bristol* and the Earl of *Stratford*; and he therefore believes, that whoever continued, or proposed that the said Instructions should be conformable to her Majesty's real Sentiments, and was far from any Thought or Design to abuse the Royal Authority, divide the States-General, prejudice her Imperial Majesty, or any of the Allies, or to carry on the Measures of *France*: And if King *Philip* afterwards, upon Information that the then *Duchesse* was likely to live, or on the pressing Influences of the *Spaniards*, and Influence of Spanish Councils, or upon any other Motives, refused to accept of *Italy* and *Sicily*, and chose rather to renounce the French Monarchy; he thinks no Person who aids in the Service of the Crown can be safe, if it may be charged on him as a Crime, that he advised Instructions, which by increasing Circumstances afterwards became impracticable. But he the said Earl doth not admit, that he continued or prepared the said Instructions, or was consenting or advising to the concerning or preparing of them, or prevailed on her Majesty to sign them; much less that he abused the Royal Authority, to the Detraction of the States-General, or intended the Prejudice of her Imperial Majesty or any of the Allies, or was engaged to carry on the Measures of *France*, or had, when the said Instructions were prepared, proposed or agreed with the Ministers of *France*, that *Spain* and the *West-Indies* should remain in a Branch of the House of *Bourbon*, or had prevailed on her Majesty to give any private Treaty, whereby the same is made, if the Plenipotentiaries were introduced, in Case the Enemy should object, that the Second Article of the Treaty, signed by Monsieur *de St. Pierre*, implied the Duke of *Angoy* should continue on the Throne of *Spain*, to imply that such Article was binding to *France*, but had neither the Queen nor her Allies under any Obligation, the said Earl doth not apprehend how an Intention to her Majesty's Plenipotentiaries, to make a just Answer to his Intention, that might happen to be drawn by the Enemy from the Words of such an Article, can be interpreted an entering into a Confederacy or Coalition with the Ministers of the Enemy, or that her Majesty's Consent is such Intention could imply any Design to impose on his Imperial Majesty or the Allies, or to conclude any Negotiation between Great Britain and *France*. But the said Earl is confident it will not appear by any of his Actions, or the smallest Circumstance, that he ever entered into any Confederacy or Coalition with the Ministers of the Enemy, or prevailed on the Queen to give her Consent thereto, or had any Design to impose upon his Imperial Majesty, or any of the Allies, or ever was privy to any secret Negotiations or private Treaty between Great Britain and *France*, whereby either in the before-mentioned, or in any other Particulars, any Reproach could

be brought on the Crown of their Realm, or any Treaty wherein her Majesty was engaged to her Allies were violated.

In answer to the Sixth Article, the said Earl doth advise, That after the Conference of Peace between the Plenipotentiaries of the Allies, and those of the Enemy, for negotiating a general Peace, were opened, wherein as he is persuaded her Majesty and her Ministers did act in perfect Confidence with the Allies, in order to promote their common Interest, and to obtain from the Enemy all just and reasonable Satisfaction; the Progress of the said Negotiation was delayed by Debates, concerning the Enemy's Refusal to give their Answer in Writing to the Demands of the Allies; but he doth not know that any of the Ministers of Great Britain did, by any Intermittence or Concurrence, assent thereto. And if, during that Time, her Majesty thought fit to authorize any of her Ministers to move or negotiate upon any particular Points relating to the Peace, directly from England to *France*, in order to facilitate the general Negotiations of Peace, which he the said Earl doth not admit to have been done by his Privy; yet he the said Earl doth not apprehend, that by the Conditions of the Kingdom, or any Law or being, the Queen was delayed from doing so; or that by continuing the said Plenipotentiaries, he had so far delegated to them her Royal Authority, as to be disabled, without seeking their Commission, to treat or negotiate any Matters conducing to that End, in such other Manner as he should think fit. The said Earl faith, that he did not advise, continue, or promote any private, separate, or unofficial Negotiation with *France*, nor doth he know any Negotiation relating to the Peace was carried on without Communication thereof to the Allies. And the said Earl doubts that he ever assumed Royal Authority, or that he treated of Peace with *France* in any manner that could be liable to such Imputation, or did promote the Design of the Enemy to the Detraction of the common Cause of her Majesty, or of her Allies, contrary to the Laws or Constitution of this Kingdom, or in Violation of any of the Alliances her Majesty stood engaged in, or of the Affurances given by her Majesty, or of her Instructions to her Plenipotentiaries; or that any Terms of Peace were by him at any Time suggested, prejudicial to the Interest of her Majesty, or her Kingdom, or Allies, or whereby the good Effects of the general Negotiation were defeated.

In answer to the Seventh Article, the said Earl faith, That he never advised her late Majesty to accept of a Treaty with *France*, on a Supposition that the Spanish Monarchy should continue in the Possession of a Branch of the House of *Bourbon*; nor did he advise or carry on any private or separate Negotiation with *France*, on the Subject of a Renunciation to be made by the Duke of *Angoy*, of the Right he might have to the Kingdom of *France*, and that that Renunciation should be the Security against the Return of the Two Kingdoms to be that by his Council her Majesty was persuaded on to accept, and finally to conclude and signify a Treaty of Peace with *France*, wherein the said Renunciation is taken as a sufficient Expedient to prevent the Mischiefs that threatened all Europe, in case the Crown of *France* and *Spain* should be united upon the Head of one and the same Person; Nor doth he know, that during the said Negotiations, any such Memorial, as in the said Article is set forth, was transmitted by the said Monsieur *de Torgy* to any of her Majesty's Principal Secretaries of State: But he the said Earl doth freely acknowledge, that if he had been called upon to give his Opinion concerning the leaving of *Spain* and the *West-Indies* in the Possession of a Branch of the House of *Bourbon*, and accepting the Renunciation of his Right to the Kingdom of *France* by the Duke of *Angoy*, he doth not at present see any Reason why he might not have been of Opinion for leaving *Spain* and the *West-Indies* to the present Possessor, and accepting the Renunciation, rather than have continued the War, so burdensome to the People, and so impracticable upon the Foot on which it then stood, especially since all Endeavours to remove him by Treaty or Force had so long proved inefficual. And in case any such Memorial as is set forth in the said Article, was sent by any Minister of *France* to the Secretary of the late Queen, he should look upon the same as a Proof of the Excellence of the Court of *France* to send such Renunciation, which might more effectually prevent all Possibility of annexing the Crown of *Spain* to that of *France*. But whatever Inducements might be for such a Memorial (if any such was transmitted) the said Earl doth affirm, that he never gave any Council by which the Interest of the common Cause could be better'd in the Hands of the Enemy, nor doth he think it was possible by any Power and Influence, to engage her Majesty to become Party with *France* in any Decree, but whatever Credit he at any time had by her Favour, he always used it with the utmost Sincerity for her Service, and the Good of her People.

In answer to the Eighth Article, the said Earl believes, That her late Majesty *Queen Anne* did, on the Seventh Day of *December*, in the Year of our Lord One Thousand Seven Hundred and Eleven, recommend it to the Throne, that Provision might be made for an early Campaign, in order to carry on the War with Vigour, and as the best Way to render the Treaty of Peace effectual; and he doth believe, that in order thereto Supplies were granted, and Magazines provided at a great Expence for an early Campaign, and that in pursuance thereof her Majesty might find some General Officers to explain her Intentions to her Allies; and likewise instructed her General the Duke of *Ormond* to declare her Resolutions of carrying on the War, and to concert with the Generals of the Allies the proper Measures for entering upon Action: And he doth believe, that the Confident Army was provided with all Necessaries; but whether the said Army had approached, or how near they had approached to the Enemy; whether they had any, or what Superiority, as to the Number of Troops; or what Likelihood there was, that they would have been able, either by Battle or Siege, to have beat't the Affairs of the Allies, or to have facilitated the Negotiations of Peace, the said Earl is not able to say: But it will be obvious to every one, that any Mismanage or Diligence on the Part of the Allies, at such a juncture, must have been fatal to them: And though the Divine Assistance had been very remarkable in the many Victories her Majesty's Forces had obtained, yet her Majesty's







any Law of this Realm; and that both Countries might hereafter divide the Crown of the Advice and Assistance of several Members of the Privy-Council, in Matters of the greatest Importance, by deterring them from giving such Advice as, by their Oaths, and the Duty of their Place, they thought to do, would overthrow all the ends of referring Amity between France, and render the Loss, in case of High-Treason, accidental, which by reason of its being the most painful, might be much plain, and would be highly dangerous and destructive to the Lives and Liberties of the Subject.

In answer to the Twelfth Article, the said Earl (not admitting that her late Majesty Queen Anne should be engaged by Treaties in manner as in the said Article is alleged, but referring himself to the Treaties, when they shall be produced, for authority, dring, that he did in any of the Years One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, One Thousand Seven Hundred and Twelve, or at any other time, aid, assist, or otherwise to the Duke of Devon, in the said Article insisted, or advise or counsel any of the Enemies of her late Majesty, in concert with any of them, or promote the yielding or giving up of France and the *West-Indies*, or any Part thereof, to the said Duke of Devon, as Manager and Form as in the said Article is alleged. And the said Earl said, as in his Answer to the Eleventh Article he hath already said, that during the Negotiation of the late Peace, he had the Honour to be one of her late Majesty's Privy-Council, and whenever Counsel or Advice was given, relating to any Terms of the said Peace, he acted therein as a Privy-Councilor and Minister of State, and so otherwise, and insists as in his Answer to the Eleventh Article he has insisted.

In answer to the Thirteenth Article, the said Earl admits, that the flourishing Condition of Trade and Navigation contributes much to the Riches, Power and Strength of their Kingdom; and believes, that her late Majesty had a just Regard thereto, and a sincere Desire to obtain some Advantages therein for her People; and did make the several Declarations for the Thence forth in this Article: And that both Houses of Parliament did, from time to time, express their grateful Acknowledgments to her Majesty, for her great Care and Concern for the Welfare of her People; and believe, her Majesty might think it reasonable, considering the share and Benefit in that her People had suffered in the War, that France should, in the first Place, adjust the Interests of Great Britain, which were to be founded on the Conclusion of a general Peace: But the said Earl doth not know or believe it to be the issue on foot, or in the Progress of any Negotiation on between the Ministers of Great Britain and France, as was laid down in a Principle that France should in the first place consent to adjust the Interests of Great Britain, so the latest that the Ministers of Great Britain have thereby be enticed to engage the Queen to make the Conclusion of the Peace only to France; nor doth he know that any Commissions were made by the Ministers of Great Britain, with intent to promote the Interests of France against the Allies, or that any Measures were moved into or conceived between them, in order to strengthen the Hands of the *Rouls*, or to enable them to impose the Terms of a general Peace. And the said Earl doth absolutely deny that he was engaged, in concert with France, in any Negotiation destructive to his Country, or that he nor had the least Imagination or Thought sending that way, or to the lessening the Commerce of Great Britain to the Aggravation of France: But on the contrary, he hath always had the most just and sincere Desire to secure and advance the Commerce of Great Britain, and to preserve his Country, in whole Service he hath been always ready to sacrifice himself, and every private Interest whatsoever. And the said Earl is not conscious to himself of any want of Duty, either in not insisting upon, or not protecting the most certain securities that could be obtained for the Safety and Advantage of the Commerce of their Kingdoms. And the said Earl doth so admit, that he did advise her late Majesty, that any Proposition should be first by Mr. Prior to France; or that any private or separate Treaty, or Preliminary Articles, which are said to be signed the Twenty-seventh Day of September One Thousand Seven Hundred and Eleven, should be signed. But the said Earl hath been informed and believes, that in a Paper intitled, *The Adjuster of France to the Demands of Great Britain* more particularly, it is said, that the entire *Rights* of Newfoundland, and of the Bay and Strights of Hudson, was demanded for the English: And that the French King's Answer was, That the *Dispossession* of that Article should be referred to the general Conference of the Peace, provided the Liberty of fishing and drying of *Crabs* upon the life of Newfoundland should be returned to the French. And the said Earl conceives that Paper was not immaterial, but was to be the Subject of future Conferences, wherein the whole Matter might be entirely considered; and consequently that the entering into Conferences on that Paper, was not the yielding to the French the Liberty of fishing and drying Fish on Newfoundland, which they insisted on. And the said Earl desires, that he advised the Demands for Great Britain, in Point of Commerce, should be made in loose, general, or insufficient Terms; or that he advised the Liberties insisted on by the French should be given up to France, as in the said Article is alleged: And he believes that when it is considered what Advantages were likely to ensue to the Commerce of Great Britain by the *Adjuster* Contract, and the Liberty of Trading to the Spanish *West-Indies* by the Cession of *Arion*, the Bay and Strights of *Hudson*, the Island of St. Christopher, Newfoundland, the Island of St. Pierre, with other adjacent Islands; by the Demolition of *Dunkirk*, and the Cession of *Parr-Aleu* and *Gibraltar*, it will not be thought the Commerce of Great Britain was regulated by her Majesty, in the late Treaties of Peace. And as the said Earl doth not know that France was at any time Master of the Negotiations, he denies that he did engage her Majesty in any private Treaty with France, without Security for the Commerce of Great Britain; or that he did contrive, with any of the Ministers of France, to keep in Suspense any Matter that concerned the said Commerce, or that he was any way instrumental in the preventing any Advantages of the said Commerce from being settled, or that he contrived to elude any thing that had been agreed on in any Negotiation for the Benefit of Great Britain. And although the said Earl doth not admit, that he advised the Ninth Article of the Treaty of Commerce with France,

yet he begs leave to observe, that nothing is positively stipulated in the Article, but the whole is conditionally, and left to be determined by the Wisdom of Parliament; and hopes it will never be thought an Act of Treachery, to refer any Article of any Treaty to the Judgment and Consideration of Parliament, whatever Judgment the Parliament shall think fit to make thereon. And the said Earl desires, that he advised her Majesty to agree with France, that the Subjects of France should have Liberty of fishing, and drying Fish on Newfoundland: But the said Earl believes, that what her late Majesty agreed with France, relating thereto, will not seem unreasonable, if it be considered, that the French have long claimed a Right to, and were in Possession of great Part of Newfoundland; and that they were allowed to continue in Possession thereof by the Crown of England, in a Treaty made at *Windsor*, in the Year One Thousand Six Hundred and Eighty-Eight, and in another Treaty made at *Rijswijk*, in the Year One Thousand Six Hundred and Ninety-seven. And the said Earl doth not know that such Agreement of her Majesty is contrary to the express Provision of any Act of Parliament, since he declares the Act made in the Tenth and Eleventh Years of the Reign of King *William* the Third, intitled, *do not to interrupt the Trade to Newfoundland*, cannot reasonably be intended, or construed to extend, to any Part of the Island, other than what was at the time of making that Act in the Possession of the English. And the said Earl is informed, that at that Time the Part of Newfoundland, where the Subjects of France are, by the Treaty of *Utrecht*, allowed the Liberty of fishing, and drying Fish, was not in the Possession of the English. The said Earl desires, that he advised her Majesty to make a Cession to France of the Isle of *Cape Breton*, or that he advised her Majesty to consent, that what is agreed in the Treaty of *Utrecht*, concerning the Fishery of Newfoundland, or *Cape Breton*, should be made an Article of that Treaty: However, the said Earl doth not know that *Cape Breton* was Part of the Territories of the Crown of Great Britain; nor doth he apprehend, that her Majesty, who in her Speech from the Throne declared, that France had consented to make an absolute Cession of *Acadia*, with the rest of *New Scotia*, or *Arion*, should be understood to speak of *Cape Breton*, which is not Part of that Province, but an Island detached from it. The said Earl further faith, he consents, that the only Advantages in Trade, *Spain* and *Great Britain*, did not depend on Negotiations to be made good by Act of Parliament. On the contrary, he doubts not to make it appear, that many Advantages in Trade were stipulated for Great Britain, in the late Treaty at Peace and Commerce, which have been enjoyed by the Subjects of Great Britain, since the Conclusion of the said Treaty, notwithstanding the Parliament hath not thought fit to make any Act to enforce the Ninth Article of the Treaty of Commerce with France. And the said Earl desires, that by his Counsel, the good Intention of her late Majesty, to have obtained for her People advantages of the Terms of Commerce, were frustrated, or to confute to any Treaty of Great Britain rendered precarious, or to the Misery of the *French*, or any beneficial Branch of Trade yielded up to the Subjects of France. And as the said Earl shows the being concerned in any Violation of Treaty, or in carrying on the Measures of France, or in any Negotiation which could continue in the Sacrifice of the Commerce of Great Britain to France, he observes, with great Satisfaction, the flourishing Condition of the Trade and Navigation of their Kingdoms, since the Conclusion, and by Means of the late Peace, in the great Increase of the Number and Tonnage of Shipping, of the Exportation of the Woolen Manufactures, the Fish, and other Produce of this Kingdom; and that in consequence whereof, the Customs have been greatly advanced, near three Millions of Gold and Silver hath been coined, and the Exchange has been all along in the Favour of England, and so from all Parts of Europe.

In answer to the Fourteenth Article, the said Earl doth not admit that he formed any Project, or Design, for disposing the Kingdom of *Spain* to the Duke of *Savoy*, from the House of *Austria*; or that he did advise her Majesty to give any such Instructions to *Henry Viscount Delmeville*, as in the said Article mentioned, or to confute to any Treaty wherein a Cession is made of the said Kingdom to his Royal Highness without any Consent or Participation of his Imperial Majesty; nor doth he admit that her Majesty was prevailed on, by his Advice, to assist his said Royal Highness with her Fleet, against the Emperor, in order to obtain the Possession of that Kingdom. But in Justification of her Majesty's Proceedings, in relation to the said Kingdom, the said Earl doth beg leave to observe, that by the Grand Alliance it was agreed, among other Things, that the Confederates should use their utmost Endeavours to recover the Kingdom of *Spain* out of the Hands of the Enemy; and that the principal Ends for endeavouring the Recovery of *Spain* were, that his Imperial Majesty might have a reasonable Satisfaction for his Pretensions to the Spanish Monarchy; and that the Trade and Navigation of the Subjects of Great Britain and Holland might thereby be better secured. Since therefore the Emperor, and Imperial Countess of *Austria*, were now fallen to *Charles* the Third, who at the Time of that Treaty was a younger Branch at that House. Since several Towns in the French *Flanders*, which were not in the Possession of King *Charles* the Second, at the Time of his Death, together with Spanish *Flowers*, *Arion* and *Nepin*, might have a reasonable Satisfaction for his Imperial Majesty's Pretensions to the Spanish Succession: And since the Trade and Navigation of the Subjects of Great Britain and Holland would be as effectually secured, by the Disposition of the Kingdom of *Spain* to the Duke of *Savoy*, as if the said Kingdom had fallen to the Share of the Emperor; And greater Difficulties would be likely to arise, in obtaining the Disposition desired to the House of *Austria*, than to that Duke, it is as much as King Philip might be more easily reduced to yield to the Duke of *Savoy*, than so to present a Prince as the Emperor; and there were Grounds to believe that the Emperor and States of *Italy*, who are in apprehension of the growing Power of the House of *Austria* in *Italy*, that they would suffer any Extremity, rather than submit that *Spain*, together with *Arion* and *Nepin*, should be in the Hands of the Emperor, the said Earl doth not discern how any Project to dispose the said Kingdom to that Duke could



be found useful, diffuse, and unbecomingly, or an Act of Injustice to the Emperor of Morocco, or to the Grand Alliance: Nor doth she wish to remember, in what manner she was contradictory to any Declaration of her Majesty, or the Alliance, which she had given her Majesty's Council. And in this her Majesty's Council, afterwards, to employ any other Place to assist this (that is, not good and faithful Ally, to make the Duke of the Kingdom of Morocco, in Consideration of the said Duke's freely Affection to the Christian, and great Submission by such Assistance, he the said Earl is not able to see, why such Assistance might not be given to the said Duke, as well as to any other of her Allies which must. And since it is allowed by this Article, that the Duke of Savoy never made any Application, in order to obtain the said Kingdom for himself, it seems an Evidence at least, that the Person or Persons who advised the Queen to agree to such Alliance, did not act upon any private Interest, or had any other View than the Preservation of a Balance of Power in Europe, and the Security of the Trade and Navigation of the Subjects of Great Britain and Holland, and cannot reasonably be thought, upon a fair and candid Interpretation, to have been guilty of betraying the National Faith, or Honour of the Crown, or employing the National Power of these Kingdoms, or the Supplies granted by Parliament, against an Ally of this Kingdom.

In answer to the Fifteenth Article, the said Earl faith, he is and always was of Opinion, that the Word of the Swiss is sacred, and that all Communications from the Throne to Parliament ought to be true, and that it becomes all Ministers of State, as far as in them lies, to maintain the Honour of the Crown, in such Cases, with the utmost Exactness; nor doth the said Earl know that he hath, at any Time, been defective in his Duty, in this Particular, or ever took upon himself any arbitrary or unreasonable Authority, much less the chief Direction and Influence in her Majesty's Council: Nor did he ever prostitute the Honour of the Crown or Dignity of Parliament, by misapplying any Part of the late Negotiations of Peace, to deceive either her Majesty, her Allies, her Parliament, or her People; nor did ever prepare, form, or concert, or advise her Majesty to make any Speech or Declaration from the Throne to her Parliament, that was not conformable to Truth. He believes her Majesty might make several Speeches from the Throne to her Parliament, at several Times in the said Article mentioned, to which the said Earl refers; and particularly, that her Majesty did on the Seventh of December, One Thousand seven Hundred and Eleven, declare, that her Allies, especially the States General, had, by their ready Compliance for signing a Treaty of a general Peace, expressed their Confidence in her; but the said Earl not admitting there were such Representations as are alleged in this Article, begs leave, in Vindication of the Honour of his Royal Majesty, who was a Prince of blood by his Birth, and Truth, to observe, that the States General sent over Monsieur Bay to her Majesty, with Letters full of Assurance of their Respect for her Person, and their Resolutions not to separate themselves from her; and likewise signified by her Ministers, their Readiness to concur with her Majesty. And the said Monsieur Bay, immediately upon his Arrival at London, delivered Passports for the French Ministers to come to Utrecht; and at a Meeting of several Lords of the Council, showed his Approbation of sending several Letters to invite the rest of the Allies to the general Congress: And the said Monsieur Bay exhibited full Powers for preparing and signing a new Treaty, whereby her Majesty and the States should be mutually engaged in making and signing Peace, to guarantee the Peace when made, and to invite the rest of the Allies into such Guarantee; all which Matters and Conditions being previous to the Seventh of December, One Thousand seven Hundred and Eleven, her Majesty might justly regard the aforesaid authentic Acts and Assurances, as greater Proofs of the Confidence the States had in her, and of their Readiness to concur with her, than any Representations or Reports before that Time; and that the said Declaration of her Majesty from the Throne was founded upon the strictest Truth. And the said Earl believes, that every one who impartially considers the Steps taken in the late Negotiations of Peace, the Length of the Treaty, the several Letters from one of her Majesty's Principal Secretaries of State to her Plenipotentiary at Utrecht, the Ratification of the Engagements signed by her Ministers and Monsieur Bay, the eighteenth of December One Thousand seven Hundred and Eleven, and her exhorting the States to ratify the same; her pressing Instances to the Princes and States of the Empire, and the many other Acts which were done by her Majesty's Orders during that Transaction, for the Service and Satisfaction of her Allies, will readily acknowledge, that her Majesty did her utmost to procure for her Allies, and in particular for her Imperial Majesty, all reasonable Satisfaction, and to unite with them in the closest Engagements to render the Peace secure and lasting, agreeable to her Speech of the said Seventh Day of December, and her Message of the Seventeenth of January following, in this Article mentioned: And if by any extraordinary Demand or groundless Jealousies of any of the Allies, or other Accidents, her Majesty was not able to obtain for them all the Advantages she desired, this will not detract from the Truth and Sincerity of her Majesty's Expressions. And it is evident her Majesty did procure them to great Satisfaction, that the Allies did all sign the Peace at the same Time with her Majesty, excepting only the Emperor; and even his Interests were so far adjusted, that what remained in dispute was not thought sufficient to delay to great good and Work: And it is well known the Emperor of Germany have frequently declared signing her Treaties or Peace at the same Time with their Allies. But that her Majesty was induced by any Influence of the said Earl to enter into any Negotiation with France, exclusive of her Allies, or that the said Earl caused on any such Negotiation, or that the Interest of the said Allies, or in particular of the Emperor, were, by any Practices of his, given up to France, he utterly denies. And when it is considered, that such French Blood and Treachery had been long to recover Spain and the *West-Indies* from the House of Bourbon, that an expensive War had for many Years continued, which her Majesty still supplied with new Recruits and re-

double Expenses; that her Armies and those of the Allies, had been beaten in Spain; that Prince Eugene had declared, that Forty Thousand Men, and Four Millions of Crowns for *donum* would be necessary for carrying on that War, and that his Master could supply no more than a Fourth Part of that Charge; that it was found by long Experience, how easily the People of Spain in general were to submit themselves to the House of Austria; that her Majesty differed the Charge of renewing the War in Spain, would be a Burden too great for her Subjects; and that there was some Probability of its being successful; that the treacherous Practices were then, by the Death of the Emperor Joseph, fallen to King Charles, who was then her chosen Emperor (by which Event the Interest of the Princes and States of Europe were changed) it cannot be doubted but that her late Majesty had, at the Time when she made the aforesaid Declaration, done her utmost to recover Spain and the *West-Indies* by Force of Arms: And the more she could so advantageously by way of Negotiation, whereas the Insult with that Excessively to King Philip's quarters Spain, then France complied with her Majesty's Proposals; but a new King Philip could not be prevailed on so give up Spain, her Majesty thought his Renunciation of the Crown of France, a Circumstance then good, the most practicable, if not the only Method left to prevent the Union of those two Monarchies. But the said Earl doth not think it probable, that the leaving Spain and the *West-Indies* to the House of Bourbon, was the Foundation of the Preliminary Articles signed by Monsieur Almonet, and of the Declaration annexed, which had been signed by the Lord Darvill and Mr. St. John, with her Majesty's Consent (and which the said Earl supposes it was called the private Treaty in this Article), since he believes it was then thought more likely that the Crown of Spain might fall to some other Prince. And the said Earl doth not believe, how her Majesty can be charged with uttering any Falshy in her Message of the Seventeenth Day of January, whereas she takes notice how groundless the Reports were that had been spread of a separate Peace being treated, (for which Report there was not then, nor at any other Time, the least Foundation, since only four or five Points were asked, relating to the particular Interests of her own Kingdoms, and even these were to have no Effect upon the Conclusion of a general Peace, and were likewise such a condition, commensurate to the Allies. And the said Earl doubts, that she could, at any Time, there were carried on, by him, any separate Measures with the Ministers of France; nor doth he conceive, that the Proposal about the Renunciation was merely speculative, but that it was of such a Nature as would excite Jealousy, and keep the Crowns of France and Spain more effectually divided than ever, if it be considered, that it did not consist only in a Renunciation to be made by Philip, then in Possession of the Crown of Spain, of his contingent Right to that of France, but that there was a Title to the Crown of France thereby given to the Duke of Orleans, and after him to the rest of the Princes of the House of Bourbon, who could not be presumed to want the Will, he would be likely to want the Power, to take Possession of the Crown of France, by virtue of such Title, in Opposition to a Prince at such a Distance, and who had formally renounced all his Pretensions to it. Nor can the said Earl think, the Declaration of any Minister of France, against such Expedient (if any such were made) a sufficient Ground for her Majesty to decline it. The said Earl therefore must beg leave to repeat, that he is not able to discover, from any Thing that appears in these Speeches, that in the particular afore-mentioned, or any other, he in official Point relating to Peace and Commerce, or concerning the Interests, as well of the Allies as of Great Britain, were misapprehended by her Majesty; nor doth he know or believe, that any Influence can be given wherein he abused the Favour of his Royal Majesty, to whom he did always bear and pay the most sincere Veneration and Duty, or wherein he did mislead her Parliament into any groundless or false Resolution, or prevented their Advice to her Majesty, or obtained their Approbation to any dangerous Practices, or whereby her Majesty could be ever deprived of the Confidence of her Allies, or exposed to Contempt.

In answer to the Sixteenth Article, the said Earl doth insist, that by the Laws and Constitution of this Realm, it is the undoubted Right and Privilege of the Sovereign, who is the Fountain of Honour, to create Peers of this Realm, as well in name of Parliament, as when there is no Parliament sitting or in being; and that the bareness of this Branch of the Privilege is declared, in the Form or Manner of all Patents of Honour, so proceed or move into, as an Act of mere Grace and Favour; and that such Acts are not done, as many other Acts of a public Nature are, by and with the Advice of the Privy-Council, or, in Acts of Pardon usually can, upon a favourable Recommendation of several Circumstances, or upon Reports from the Attorney-General, or other Officers, that such Acts are lawful or expedient, or for the Safety or Advantage of the Crown; but flow entirely from the beneficent and gracious Disposition of the Sovereign. He further says, that neither the Warrants for Patents of Honour, the Bills or other Impediments of such Patents, are at any time communicated to the Council, or the Treasury, or several other Patrons are; and therefore the said Earl, either as High-Treasurer or Privy-Councilor, could not have any Knowledge of the same. Nevertheless, if he have heard briefly had thought fit to acquaint him with her most gracious Intention of creating any Number of Peers of this Realm, and had asked his Opinion whether the Peers whom she then intended to create, were Persons proper to have been promoted to that Dignity? He does believe he should have highly approved her Majesty's Choice; and doth not apprehend that in so doing he had been guilty of any Breach of his Duty, or Violation of the Trust as he had repaid; since they were all Persons of Honour and distinguished Merit, and the Passage thereby was so greatly enlarged, considering some of the great services had been Peers by Descent, and that many Titles of Honour were then lately extinct. And the said Earl believes many Influences may be given, where this Privilege hath been exercised by former Princes of this Realm in an extensive manner; and particularly



calary in the Reign of King Henry the Eighth, King James the First, and his late Majesty King William. The said Earl begs leave to add, that in the whole Course of his Life he hath always lov'd the established Constitution, and in his private Capacity, as well as in all public Stations, when he had the Honour to be employ'd, hath done his utmost to preserve it, and shall always continue so to do.

In answer to the further Articles of Impeachment exhibited against the said Earl: As to the First of these Articles he saith, that he believes, in or about the Month of January, One Thousand Seven Hundred and Ten, an Expedition was projected, for making a Conquest of the City of Sweden, on the River of St. Lawrence, Canada, or other Possessions of the French King in North America; but desires he should be Majesty's pleasure to confer on the making such Expedition, or to give Orders for equipping any Battalions of the Forces in her Majesty's Service in America, or to send any such Battalions, or any Squadron of Men of War on the said Expedition: But having heard that the said Project, or some Expedition of the like Nature, had been some time before considered in a Committee of Council, and afterwards laid aside for that Time, and not being fully apprised of the whole Project, nor so well vers'd in the Affairs of that Part of the World as he was, he had more Opportunity of knowing them, and left the Expedition might not at that Time prove so fructifying, or so advantageous as others of better Knowledge in those Matters than himself did expect, he did all that he apprehends his Duty required to prevent the putting the same in Execution, and expressed his Concern as to some Persons about the Queen. And having so far shewn his Opinion in the said Defence at that Time, believes it would not have been thought proper for him to have appeared at the Meetings, where the Methods only of carrying on the Expedition were to be adjust'd; of which Meetings there had been but two, before a Misfortune had happened, which confined him to his Bed. But the said Earl denies, that he knew the said Expedition was design'd, or design'd, nor did he hear that it was laid off, till after by a Committee of Council, as dangerous or impracticable, but only as improper in the Circumstances of Affairs at that Time: Nor does the said Earl know or believe the said Expedition was set on Foot with any Design to pursue the Interest of the French King, or to weaken the Confederate Army in Flanders, or to dissipate the Naval Forces of this Kingdom. And when others of her Majesty's Council, better acquainted with that Affair, did judge it to be proper and practicable, he did not think it became him, upon the Strength of his own private Judgment, further to oppose an Expedition of that kind, succeeded, might certainly would have given a great and terrible Blow to the Commerce and Trade of France in that part of the World. And the said Earl, with great Rejoice, is perswaded your Lordships will not think it unlikely that her Majesty should take the Opinion of those who better understand Affairs of that Nature; or that your Lordships can judge the said Earl in that Respect to have been wanting in his Duty to her Majesty: but hopes it will be rather as Evidence of his Fidelity to the Queen and his Country, that he is so far discouraged what as his own Judgment he was sufficient of. However he is furnish'd, that doth of her Majesty's Council who did oppose the Expedition, what therein was a private Desire for the public Good, notwithstanding the ill Success it was attended with, which might chiefly be owing to Delays by contrary Winds, and other unforeseen Accidents. And he doth not believe, that her Majesty's Allies did suffer any Prejudice, or the common Enemy receive any Advantage by the dispatching of Forces from Flanders to serve in this Expedition; and is inform'd, that to prevent any such Danger, her Majesty's General who commanded at that Time in Flanders, had Orders for providing other Forces in their Place, if he judg'd it necessary. And the said Earl does acknowledge, that the sum of Twenty thousand Pounds, or thereabouts, was drawn at the Treasury about Year One Thousand Seven Hundred and Eleven, on account of Arms, Accoutrements, Goods, and Merchandise, said to be sent on the said Expedition to Canada; but he saith, that he was so far from advising her late Majesty that the said Sum should be rais'd and paid, that on the contrary he put a stop to the Payment of the same, until he had done all he could at that Time to examine into the Expedition of the said Money: But being then High Treasurer of Great Britain, and having receiv'd her Majesty's Orders to pay the said Sum, and not being able, with his utmost Precautions then, to discover any just Cause why it should not be paid; he did afterwards, in Obedience to those Orders, and according to the Duty of his Place, counterfeign a Warrant to the Paymaster of her Majesty's Forces for the Payment of the same, pursuant to which, he believes the same was rais'd and received. And as to that Part of the said Article, which charges the said Earl with employing his Arts or Credit to keep the House of Commons from examining that Affair, he begs leave to say, that whatever Suspicion he might entertain in his own Mind, he did not upon Examination find, that there was sufficient Proof to justify the laying them before either House of Parliament; and although he had been inform'd, that the Papers relating to that Expedition were laid before the said House, and have been all along in the Power of the present House of Commons, yet he hath not heard that any Fraud hath been made out in that Affair, notwithstanding the Goodness which had them under their Inspection neither wanted Abilities to make the utmost Discovery, nor could be supposed to be prevented therein by any Influence of the said Earl: And he hopes it will not be imputed to him in a Fault, if he had used any Skill or Credit to keep the House of Commons from examining that Affair at that juncture, when by an unreasonable Enquiry, before a proper Proof could be had, the Fraud, if any Fraud there were, could be likely for ever to escape unpunish'd. But the said Earl desires that he ever entrusted or had any arbitrary Power at his Discretion, either in her Majesty's private Council, or the great Council of the Nation, or entertained any Design to prevent the Justice due to the Queen or the Nation, or that any Discovery had been made to him, further than what might give Suspicion to one who was always jealous (as he became him) of any Misapplication of the public Treasury. And the said Earl saith, that he is not conscious, that by any Letter or Memorial to her Majesty, he hath said contrary to his Duty; but humbly

hopes he may allowed to shew, that it would be a Matter of particular hardship, and what might be not inconsistent with the Rules of Government, and without Prejudice, if the writt'n Letters and Instructions Papers and Letters, wrote to that most renowned and good Prince, her late Majesty, by her own special Command, and for her own private Perusal, should be imputed to any as a Crime; and for any Question from any such Letter or Paper could be alleged against the said Earl, he doubts not but there might appear from other of her Majesty's private Papers what would justify him in many Particulars whereunto he is charged, and would give further Proof (if it were needful) how tender and affectionate her Majesty was to all her Subjects.

In answer to the Second additional Article, the said Earl doth admit, that about October One Thousand Seven Hundred and Eleven, her late Majesty did sign a Warrant directed to him, that her Treasures of Great Britain, for the raising and Payment of the Sum of Thirteen Thousand Pounds to John Drummond, Esq; in the Article named; and that on or about the Twenty-fourth of November following, in pursuance of the said Warrant, under her Majesty's Sign Manual, he the said Earl did sign a Warrant for the Payment of the said Thirteen Thousand Pounds, but for her Majesty's Pleasure, begs leave to refer to the said several Warrants, when the same shall be produced: And the said Earl takes the Words (for Good Services of the War) to have been referred by Mislike of the Clerks; for he absolutely denies that he gave any Direction for these Words, or any other of like Import, to be inserted. And he believes all the Clerks of the Treasury know, that the Money which arose from the Sale of Tin was the Queen's proper Money for the Support of her Household, and such Occasions as he should please to direct, and not appropriated to the Services of the War, altho' sometimes it hath been practised that Loans have been taken upon Tin-Tallies for the Service of the War, and other public Services, and afterwards repaid to the said Civil List, which was possibly given occasion for such Mistake. And the said Earl saith, that having been acquainted with the Service the said Mr. Drummond had performed, by Order of the late Earl of Godolphin, in borrowing Money upon Tin as a loan interest, the said Earl after Mr. Drummond's Consent that a sum in Tin-Tallies might be struck in his Name, and with such Confidants direct, that Understanding to the sum of Thirteen Thousand Pounds should be charged in the Register of the Exchequer, on the Money arising by the Sale of Tin, in the Name of the said Mr. Drummond, who afterwards, before his going to Holland, endorsed the said Orders in the said Earl's Treasury, and left him in the Treasury; but how long it was before the said Orders were order'd, or how long they remain'd afterwards in the Treasury, the said Earl doth not particularly remember; but doth not acknowledge that the said Orders and Tallies came afterwards to his own Hands, and were disposed for his own Use. But in order to lay the true State of this Affair before your Lordships, the said Earl humbly represents, that upon his first attending the late Queen, after his being wounded, that Majesty had the Goodness to tell him, that she designed him a sum of Money: Upon which he requested to see her Majesty the said Condition of her Civil List. But several times after her Majesty asked him, why he did not find a way for receiving the Money she intended him, and bring the necessary Warrant for that Purpose? He did urged the same Reason against it, and for near six Months made no step in it, till at last her Majesty was pleas'd to say, he was resolv'd to have it done. And as her Majesty had, in Matters of her Bounty, made use of Tin-Tallies for other Persons, he was pleas'd to mention the same himself, and ordered proper Warrants to be prepared for the sum which her Majesty or her Royal Bounty intended him: That after her Majesty had so privately signified her Royal Pleasure, to bestow such Moneys on her Favourite upon the said Earl, the said Earl's Orders were drawn in Mr. Drummond's Name, with her Majesty's Knowledge, and at the said Earl's Nomination; and from that Time the same were kept under the said Earl's Direction for his Use. And the said Earl was advis'd, that nothing further was requisite to be done, after the signment of the said Mr. Drummond, for securing the said Earl's Interest in the said Tallies, till an Accident happened which made it necessary for further Security to have the said Warrant as a Declaration of Traff, which was accordingly signed by her Majesty, and is to the Effect following.

ANNE R.  
We Hereto in the Year of our Lord One Thousand Seven Hundred and Eleven, in Consideration of the many good, faithful, and acceptable Services which before that Time had been performed by us, by your Right Truly and Well-belov'd Councillor and Counsellor Robert Earl of Oxford (then and now our High-Treasurer of Great Britain) which Services were tending to the Honour, Safety, and Prosperity of us and our Realm, did the same were accompanied with great Difficulties upon himself, and Hazards to him and his Family. And particularly reflecting upon the immense Attempts made upon his Life: We did then fully resolve, at a particular Mark of our Bounty, and of our Gracious Remembrance of his former Services, to bestow upon him a sum of ready Money. And the said Earl representing to us, that the Arrears then due to our Servant and Trustee, chargeable upon our Civil List, were very great and pressing, we did therefore agree and authorize, that the said Earl should have in his own Use the several Loans amounting to Thirteen Thousand Pounds, rais'd in certain Orders of Loans, bearing Date on or about the Eleventh Day of December One Thousand Seven Hundred and Eleven, in your Name, and charged upon the Register in our Exchequer on the Money arising by Sale of our Tin, which Orders are set in Words of Payment. Now we do hereby declare and make known, that the said several Summs amounting to Thirteen Thousand Pounds, contained in the said Orders, and the Receipt thereof due to him, are, and shall be the proper Arrears of the said Earl of Oxford. And now do hereby give and authorize you to transfer and assign the said Orders, and the whole Right and value of us thereof, to the said Earl and his Assigns, or to such Person or Persons as he shall appoint in that behalf. And in Case any the said Order, or any such, or any such, or any such, the said Orders shall come to your Hands, he shall give your Pleasure: that you forthwith pay over the same to the said Earl, his Exors, Adors, Assigns, or Assigns, to his and their own Use and Benefit, without any Account



to be therefore required to sit, *ex Hæc*, or *ex Officio*. And that our Warrant, or an attested Copy thereof, shall be your justifiest Warrant and Discharge for so doing.

Given at our Court at *Woolrich-Castle* the Fourteenth Day of December, in the Twelfth Year of our Reign, *Ann. Dom. 1713.*

*Tæ* our *Trusty* and *Well-beloved*  
John Drummond, Esq.

And the said Earl believes the said Warrant was drawn by Mr. *Lancelot* Secretary to the Treasury, and by what Means the same was returned to be entered in the Treasury, he knows not. But upon having there was Discovers about the said Thirteen Thousand Pounds in Ten Tablets, he first a Copy of the said Warrant to the Officers of the Treasury, without signifying any Desire to have the same entered, well knowing it returns in Authority from the Sign Manual, which wanted no additional Force from any Entry thereof in the Treasury-Books. And the said Earl faith, that his Majesty was pleased, of her more Goodwills and Bounty, and of her own free Will, to give him the said Sum of Money in Reward of his faithful Services, and for his Subjuncts in her Service. And the said Earl faith, that the said Grant, according to the Direction upon these Tablets at that Time, amounted to the Sum of Ten Thousand Pounds, or thereabouts, whereas he acknowledges the great Honour of her Majesty, and takes notice, that Grants much larger have been made from the Crown to other Members of State, while the Necessities of the Crown have been equally pressing. And the said Earl doth not know that in this or any other Part of his Administration, he ever was guilty of any Corruption, or any Breach of his Oath or Trust as High-Treasurer of Great Britain; or that he did in any Manner abuse her Majesty's Goodwills, or make as ill Use of his Access to her Majesty, or embelish the public Treasury, or did at any Time knowingly injure or oppress her Majesty's Subjects, but on the contrary, the said Earl faith, that he managed the public Money in the most frugal Manner, in order to lessen, as much as might be, the Charge of the War; and so to say, if he could, the Contents of Great Britain from all grievous Taxes. And in further Vindication of himself against all the Imputations of Avarice or Corruption intimated in this Article, the said Earl faith, that in every Employment to which he was called by her Majesty's Favour, he was always contented with the accustomed Income and Profit of the said Employments, without endeavouring to increase his Gain by unlawful or extraordinary Perquisites; that whilst he was in any Office of Trust about her Majesty, he never abused that Trust in making any Manner of Profit or Advantage to himself, either by the Disposal of Places in his own Gift, or by the Recommendation of Persons to her Majesty for such as were granted immediately by herself, that neither in nor out of Place did he ever receive any Pension from the Crown; that as he came with clean Hands into her Majesty's Service, so he went not only with clean, but also with empty Hands out of it, having spent therein most Part of the Profits which accrued to him from the Places he enjoy'd, so that at this Time, notwithstanding all the Advantages he received from them, and the extraordinary Bounty of the Queen to him, in this Article mentioned, he can with great Truth affirm, that his private Fortune hath received very inconsiderable Addition thereby.

In answer to the Third additional Article, the said Earl faith, that *Matthew Prior*, Esq. being employed by her Majesty at the Court of France, Warrants were signed in the usual Form for Payment of several Sums of Money to the said Mr. *Prior*, which he believes from the Twenty-seventh of August, One Thousand Seven Hundred and Twenty to the Tenth of July One Thousand Seven Hundred and Fourteen, might amount to the Sum of Twelve Thousand Three Hundred and Sixty Pounds, as in the said Article is set forth, and he believes he did pay, or cause to be paid, at several Times the said Sums, pursuant to the Authority he had from her late Majesty for that Purpose, which he conceives was not only lawful, but a Duty incumbent on him. He further faith, that he doth not know that by any Law there ought to be certain Appointments or Allowances for the Maintenance and Support of Ambassadors, Excoys, Plenipotentiaries, and other public Ministers of the Crown in foreign Courts; but that her Majesty was at Liberty to vary such Appointments, and the Manner of paying them, as she in her Wisdom should think fit, out of any Funds appropriated to the Civil List. He doth believe, that there are several Instances where Persons employed to negotiate Matters of Importance, as Ambassadors or Plenipotentiaries, have been allowed One Thousand Five Hundred Pounds for their Equipage, One Hundred Pounds a Week for their ordinary Entertainment, and One Thousand Six Hundred Pounds for Luxuries, and likewise further Sums for Expenses, performed by special Order. And if the said Mr. *Prior* had been paid upon that Foot, he would have been entitled to a greater Sum from the Crown, for the Time when he was employed by her Majesty as aforesaid, even and above all Disbursements for special services. And the said Earl faith, that he takes the said *Matthew Prior* to have been sent by her Majesty *en France* for her Majesty's Service, and in order to carry on the Negotiations of a general Peace; but denies that he was any Creature of the said Earl, or fees by the said Earl *en France*, or that he came on any Negotiations of the said Earl, or that her Majesty was prevailed on by his Counsel to send the said *Matthew Prior* as her Plenipotentiary to the French King, without the Privity of or any Communications with the Alliance, or that the said Earl used the said Continuance for carrying on, or did carry on or promote any dangerous Practices with the Ministers of France, or the Enemies of her Majesty or her Kingdoms, or that he did at any Time combine with the said *Matthew Prior* to defend her Majesty of any Sum of Money whatsoever, under Colour of his Employment; or that the said *Matthew Prior* was sent into France with the Character aforesaid, without any special Appointment or Allowance for any such End, or that he did give the said *Matthew Prior* an unlimited Credit, or promise to pay him any Bills, whatever, other than what he doth by the said Authority to pay; or that any Bills of Exchange, in the said Article mentioned,

were drawn in pursuance of any such Continuance. The said Earl faith, that *Thomas Harris*, Esq. being before sent by her late Majesty to the Court of Monsieur, he the said Earl being then High-Treasurer of Great Britain, paid, or caused to be paid, to the said Mr. *Harris* the Sum of Five Thousand Five Hundred and Sixty Pounds, or thereabouts by such way as her Majesty, and according to the Duty of his Office out of Money appropriated to the Use of the Civil List. And he avers, that if Mr. *Harris* had received an Allowance in Proportion, what hath been paid to Ambassadors, it would have amounted to a great Sum. But denies, that the said Sum of Five Thousand Five Hundred and Sixty Pounds, or any Part of it, was paid without Authority, or for promoting any wicked Purpose of the said Earl, or that he did not legally or fraudulently draw, draw, or add to the Disbursements or Payments of any Sum or Sums of Money out of her Majesty's Treasury, in Part in whatsoever, or that he ever entered into any Combination with any Persons whatsoever, or any other Person whatsoever, to defraud the Majesty of any of the public Money which he was entrusted with in Management of.

In answer to the Fourth additional Article, the said Earl denies, that he ever had any Communications with Mr. *Henry* the late Confessor of the late King James the second, either by the Means of Mr. *Wells*, or by any other Means whatsoever, or that he ever conspired, or had the said Earl Design in way to promote the Interest of the Pretender, nor doth the said Earl know or believe that *Montague Gascoigne*, in the said Article named, was entrusted or employed as an Agent between any of the Ministers of Great Britain and France, in transacting any Affairs relating to the Pretender; and denies that he the said Earl had any Communications with him the said *Montague Gascoigne* in that behalf: Nor doth the said Earl know or believe that he the said *Montague Gascoigne* was empowered to concert with him the said Earl, particularly the setting any Payment or Remittance of the Annual Sum actually in interest, or any other yearly Sum to be paid or remitted out of her Majesty's Treasury into France: Neither had the said Earl the least Design, that any of the Peers or Advantages of the Peers should be made as Offering to any Advantages of the Pretender; nor did he agree or undertake to procure the Payment of the yearly Sum of Forty-four Thousand Pounds, or any other yearly Sum, to the Use of the said late King, during her Life. But the said Earl doth admit, that the late King gave Letters Patent, by Letters Patent under the Great Seal of England, bearing Date on or about the Twenty-eighth Day of August, in the Year One Thousand Six Hundred and Eighty-five, granted unto *Lorenzetto Earl of Rochester*, Henry Earl of *Perthshire*, Aubrey Earl of *Southampton*, Robert Marquis, Esq. and Sir *Edward Herbert*, Kt. (who are all since deceased) divers Annuities or yearly Sums of Money, amounting to Thirty-seven Thousand Three Hundred Twenty-eight Pounds Thirteen Shillings and Seven Pence, payable out of the Hereditary Duty of Excise, and the Post-Office, and other Revenues in the said Letters Patents mentioned, to hold to them and their Heirs, during the Life of the said Countess, in trust for her. And their Letters Patents, bearing Date on or about the Third Day of December, in the Year One Thousand Six Hundred and Eighty-five, also granted unto the said Countess a further Pension, or yearly Sum of Ten Thousand Pounds, to hold during her natural Life; whereby the said Revenues arising from the Hereditary Excise and Post-Office, and other the Revenues in the said Letters Patents mentioned, became charged with, and were liable to the said Annuities or yearly Sums, as in this Article is mentioned. And the said Earl doth admit, that the said Revenues were by several Acts of Parliament granted and assigned to the Life of his late Majesty King *William* the Third, for the Use and Service of his Household and Family, and for other his necessary Expenses and Occasions; and after his Death, during the Life of his late Majesty Queen *Ann*, were appointed to be for the Support of her Household, and of the Honour and Dignity of the Crown; but faith, that in the same Act of Parliament whereby the said Revenues are so appointed, there is a general Saving to all and every Person or Persons of all such Rights, Titles, Estates, Inheritances, Claims, and Demands whatsoever, of, in, or to, or out of the said Revenues and Hereditaments, or any of them, in them, or any of them paid, or ought to have had before the making the said Act, in fully, to all Intents and Purposes, as if the said Act had never been made. And the said Earl doth admit, that an Act of Parliament was made in the Twelfth Year of her late Majesty's Reign, whereby the Sum of Five Hundred Thousand Pounds, for the Cause therein mentioned, was to be applied in Aid of the Revenues or Branches which were appointed for the Support of her Majesty's Household, and of the Honour and Dignity of the Crown, for, or towards the paying and discharging such *Arrears* of Salaries, Wages, Diet-money, and other Allowances, and such Debts for Emptions, Pensions, and other Causes, as should appear to be due and owing to her Majesty's Servants, Treasurers, and others. But the said Earl faith, he hath heard that the said late King and Queen *Ann* the Second, during her life, or he is entitled by the Laws of England, by virtue of the said Letters Patent, to the several Sums of Money therein mentioned, did, by Letter of Attorney, empower and authorize the said *Montague Gascoigne* to demand and receive for the only Use, Benefit, and Relief, all Sums of Money which from and after the Fall of the *sequestration* of the Blessed Virgin Mary, One Thousand Seven Hundred and Thirteen, were become due and payable upon the said Annuities, amounting to Thirty-seven Thousand Three Hundred and Twenty-eight Pounds Thirteen Shillings and Seven Pence, and the other Annuities yearly Sums of Ten Thousand Pounds, and to give Acquittances and Discharges for the Money so received to the said Countess and herself as aforesaid; and that thereafter he the said *Montague Gascoigne* applied himself to her Majesty for the Payment of the Monies which were in arrear or grown due on the said several Annuities, from the said Twelfth Day of March One Thousand Seven Hundred and Thirteen, and that her Majesty was pleased to sign a Warrant, directed to him the said Earl, being then her Majesty's High-Treasurer, or the High-Treasurer or Commissioners of the Treasury for the Time being, in the Words or to the Effect in the said Article set forth; but for more Certainty refers himself to the said Warrant, when the same shall be produced.

And







is necessary for the Good of his People, and the Tranquillity of Europe, to enter into Negotiations for a general Peace. But the said Earl denies that he entered into any Conspiracy for subverting the Spanish Monarchy to the House of Barber, or ever had the least Design of the Ruin or Destruction of any of the Rights, Liberties, or Privileges of the Catholic; or that he ever formed any Conspiracy for abolishing them to the Fury or Revenge of the Duke of Spain, or his Adherents; or for the Expulsion of any of their Rights, Liberties, or Privileges; or that he advised her Majesty to give Directions to the Lord Lovings to acknowledge the Duke of Spain King of Spain, before any Negotiation of Peace was set on foot, in terms of Law, between the Crowns of Great Britain and Spain. On the contrary the said Earl saith, that by Letters and Papers first by one of her Majesty's Principal Secretaries of State to the Lord Lovings, it will appear, that after her Majesty had bestowed the Proposals for a general Peace, for the Good of her own People, and her Allies, the said Earl best Endeavours for obtaining the Liberties of the Catholic, at the Conclusion of the Peace, and that his Lordship was directed peremptorily and absolutely to insist in them: Nor doth the said Earl know or believe, that any Orders were ever sent from or given by her Majesty, to any of her Ministers, or anyone from that Demand; or that the said Lord Lovings ever declined from making the same, or that he could be so absolute. And if from any Medians of the Catholic, or of his Imperial Majesty, or from any other Cause, her Majesty's Endeavours had not their full Effect, the said Earl conceives it cannot be imputed to any Neglect of her Majesty, or any Want of Duty in him the said Earl. He believes, that about the Time in the said Article mentioned, his Imperial Majesty did enter into a Convention or Agreement for evacuating Catalonia, and that her Majesty, out of Inclination to perform her best Offices to the Emperor, was prevailed on to become one of the Guarantors thereof; but denies, that his Imperial Majesty was necessitated by any Pretence of the said Earl to make any such Convention, and is ignorant for what Cause his Imperial Majesty, when it might be concerned, assisted, in such Conventions, to make express and positive stipulations for the Liberties of the Catholic. If it proceeded from any Dependence upon the Declaration of her Majesty, to interrupt her best Offices on their Behalf, and the Pretence of the French King to join his Endeavour therein; he is confident it will appear, her Majesty's best Offices were employed in that Affair, when it is considered well-regimented by the Duke of Savoy, and the most publick Manner, to obtain for them the Privileges they desired. And that her Majesty, by her earnest Intercession, did obtain a Grant and Confirmation to all the Inhabitants of Catalonia, of a perpetual Amnesty and Oblivion of all that was done in the late War, the full Possession of all their Estates and Honours, and a further Grant of all their Privileges which the Inhabitants of both Castles (who of all the Spaniards were most dear to the King of Spain) enjoyed, or might at any Time after have or enjoy, whereby the Catholic, if they obtained not all the ancient Privileges they pretended to, received however in Compensation thereof, the Advantage of trading directly to the West-Indies, and other Privileges, to which they were never before entitled. And the House of Peers, upon Consideration of several Papers laid before them, relating to this Affair, in Pursuance of their Address to her Majesty in that Behalf, expressed their utmost Thankfulness and Satisfaction for her Majesty's repeated and earnest Endeavours for preserving to the Catholic the full Enjoyment of all their just and ancient Liberties. And it is probable her Majesty had procured to obtain for them the ancient Privileges and Liberties, in the largest Extent, if they had waited the Event of her gracious Interpositions in their Favour, and not determined to carry on the War by themselves against King Philip, after the Emperor had signed the Convention for evacuating their Country, which ascended the King of Spain in the highest Degree, and was looked upon by him as the most obstinate Rebellion. However, the said Earl saith, he never assisted the Catholic with any Expectations whatsoever, nor in any Degree contributed to engage them in any obstinate Defence against the Duke of Spain; nor advised her Majesty to conclude a Peace with Spain without Security for the ancient Rights, Liberties and Privileges of that People, or to find Sir James Wither with a Squadron of Men of War, for the Purpose in the said Article mentioned: But believes her Majesty might think herself obliged, by being Guarantee to the said Convention for the evacuating Catalonia, to send the said James Wither into the Mediterranean with a Squadron of Men of War, although he knows not the Orders or Instructions given on that Occasion; and hereby apprehends, that he cannot, in Justice, be charged with any Consequences from that unhappy People's Refusal to comply in their Submission to the King of Spain, upon the Terms her Majesty had proposed for them.

That the said Earl had laid his Case before your Lordships, wherein he hopes he hath fully answered the several Articles exhibited against him: Yes, lest there should be any Objection in his Answer, which may be made use of by his Prosecutor, he saith, he is not guilty of all, or any of the Matters contained in the said Articles, or any of them, in Manner and Form as they are therein charged against him; and humbly hopes that your Lordships will excuse any Imperfections or Defects in the said Answer, with regard to Expedition or Form, and impute whatever of that Kind may appear, to the great Weakness of Body and Ill State of Health which the said Earl now labours, and hath for some Months past laboured under, and that your Lordships will be induced to make all further the Allowance to his Unfitness, from the following Considerations, which relate to the Nature of the Charge in general, and the Difficulty with which his Defence of himself, against the Particulars contained in that Charge, is, and must be attended.

Most of the Articles, with which he stands charged, relate entirely to the Negotiation of Peace lately concluded at Utrecht; he doubts not but your Lordships will consider, that he must of necessity be under great Difficulties, in giving a full and particular Account of such a great Variety of Facts as are contained in these Articles; that several of these Facts concern Treaties made with the Ministers of Foreign States, who cannot be produced as Witnesses in his Defence, but whose Testimony

never is material, that many Steps and Proceedings in an Affair of this Nature, whose true Intents of several Parties, nor only proceed from, but some of them also contrary to each other, are to be adjusted, require great Secrecy and Address in the Management; and that in Transactions between Nations, such Terms are often proposed, and such Arguments used, as carry a different Appearance from the real Intensions of those that use: Upon which Accounts, it must be very difficult to set every thing that pass in the late Negotiations, with regard to the Enemy, and to the Allies, in a clear Light, and to justify every Step that was taken towards concluding them to the End proposed; especially those the Accounts of these Transactions, and of the Reasons on which they were founded, cannot, as he conceives, be fully cleared, but by inspecting the entire Series of Letters and Papers, which passed, during the Continuance of these Transactions, and by comparing together all Passages in them as might give Light to each other, and to the Whole. All which Letters and Papers are (as he is informed) now in the Possession of the Honourable House of Commons; nor was it thought fit, upon his humble Application to your Lordships, that he should be indebted with a Copy of them.

He hopes it may not misbecome him, on this Occasion, to observe to your Lordships, that the House of Commons, by being possessed of these Papers, have a full View of the whole Progress, and of all the several Steps of that Negotiation, than perhaps was ever in the like Case supposed to any House of Parliament; and they have therefore all the Advantage possible towards forming the Charge against him upon the Accusations of his Impeachment; whereas he (the said Earl) being destitute of all Assistance from these Papers, is under great and particular Disadvantages towards making his Defence, in the Points whereof he stands charged; and he is therefore humbly allowed, that, as your Lordships, on the one Side, will not expect from him any such Proofs of his Innocence as may be drawn from a Perusal of these Papers; so, on the other, you will not admit of all, or any of these Articles, as made good against him, unless the Accusations therein contained be supported by the clearest and most unquestionable Evidence, of which the Nature of the Facts is capable.

He submits it likewise to your Lordships Consideration, whether in a Negotiation, drawn out into a great Length, where the Advice of all those in high Trust about her Majesty was to be taken, and where several Parties were so controul'd with the Management of what was agreed upon, he can, with any Colour of Equity, be made answerable for advising and concluding the Whole.

He desires also further to observe, that every Thing, with which he is charged, was done in the Reins of a gracious Prince, now deceased, who, by Reason of the perfect Knowledge he had of the all State of Affairs at Home, of the Advances made towards Peace from Abroad, and of the Commands which he at several Times laid on his Servants, had been the best, and indeed could be the only competent Judge, who, over the he was humbly desired to deal with, led by all Advice into Measures which he did not direct and approve, or made an Infringement of Justice, which the interests of her Kingdoms to the Enemy. It is with great Grief that he finds such Things suggested, as tend to lay a Stain upon the Character of so excellent a Queen, whose Memory he is confident will be for ever dear to this Country: And therefore he takes leave, in the most solemn Manner, to assure your Lordships, that as far as he knows, or can remember, every thing relating to the Transactions of Peace was communicated to her late Majesty, and maturely considered by her, before any Thing was determined thereupon; nor was any Step taken, but in Pursuance of such Determinations.

As to the Facts in general, he the said Earl thinks he has very good Reason to say, that the Queen, who was then, and was, when it was charged, to great a Blessing for her People; and that, when it was charged, she had this Satisfaction in herself, that she had taken the most proper Measures to justify her Conduct, both toward her Allies and toward her own Subjects: For, upon a Review of her Majesty's whole Proceedings, in relation to War and Peace, he believes it will appear, and hath in Part appeared by the Answer of the said Earl to the said Articles, true, as her Majesty entered further into the War than she was obliged by any Treaty subsisting at the Time of her Accession to the Throne, to be continued more than and longer towards the carrying it on afterwards, than she was engaged to provide by any subsequent Treaties: That her Majesty's Desire of Peace being twice frustrated, when such Conductions might have been obtained, as would have fully answered all the Ends for which War was at first declared; that, all our Successes and Valours ended in the annual Increase of the Charge of England, without any farther Assistance from our Allies, and her Kingdoms being exhausted to such a Degree (notwithstanding the great Advantages obtained by her Arms) that she was not able to continue the War, upon the Foot as then stood, on Year longer; which her Allies refused to continue it, upon their equal Conditions as which they were by Treaty obliged: She was at last constrained, in Compassion to her People, to hasten to the Creation of Peace then made her from France, without relying further on the vain Hopes of gaining more advantageous Terms, by prolonging the War a Year longer. She had carried it on, for some Time, under that Prospect, without respecting the Benefits proposed, even at Junctures that seemed most favourable to her Demands, and to the Pretensions of her Allies: She had indeed, by that means, ended the Glory of her Arms; but he could not think this a sufficient Recompense for the overbearing Violence of her People, and therefore refused to lay hold of the Opportunity, then offered, as he, of ending the Way by a Peace, if it might be obtained upon Terms even, war, not, safe and honourable: And that when she were then employed in her Majesty's Councils, thought themselves obliged to second her good Intensions in this Case, and to obey her Commands with all Readiness.

The said Earl presumes, on this Occasion, to mention to your Lordships the Saying of an wise a Man, and as great a General as the last Age produced, the Duke of Permy, when France was in a far lower Condition than now, being almost equally divided between two contending Parties, and Spain was at the Height of its Glory, and he himself at the Head of a Spanish Army.



first, supporting one of their Parties, after Philip's fall had been believed for the other. It was his Opinion and the Advice he gave to his Master the King of Spain, was grounded upon it. That if France were to be got into, reducing its Towns, the World would be sooner at an End than at War. The Queen formed at this Time, with better Reason, to support the latter Judgment; and it was therefore her Pleasure, and a great Justice (as the said Earl conceives) of her Wisdom and Goodness, to think of securing a Peace while she appeared able to carry on the War her Armies being full and numerous) and before the exhausted Condition of her Kingdom, and the Impopularity on her Side, of maintaining it, disappointed an Expectation, was discovered by her Enemies. At this juncture the Queen entered upon a Negotiation of Peace, with Circumstances of great Honour to herself; France applying to her first, on this Account, previously owning her Title, and acknowledging the Right of the Prevalent Succession; two Chief Grounds, upon which the Declaration of the late War was built. And to the Allies, it was contained in the same Manner as all Treaties of Peace in Confederation have been, and, according to the known Laws of Nations in such Cases; as first Motion, and the several Steps of it, as fast as they ripened into Periods for Consideration, being without Delay communicated to the other General.

As to the Terms of this Peace, as all reasonable Satisfaction and Security due to any of the Allies, by Treaty, were obtained for them by the Queen, and their just Preterensions effectually supported; so larger Advantages were actually procured for Great Britain in particular, than ever had been demanded before, in any Treaty or Negotiation between this and any other foreign State. The said Earl leaves loose, on this Occasion, to appeal to your Lordships, whether all the Ends for which the War was entered into have not, by this Treaty, been fully attained. Whether it does not appear, by the best of Process, Experience, that the Kingdoms of France and Spain are by the Conventions of this Treaty much effectually secured? And whether any other Expedient could have been so successful to this Purpose, as that whereby it is now happily brought about? Whether the Balance of Power in Europe be not now upon a better Foot than it has been for a Hundred Years past? Whether the Advantages that have accrued to Great Britain, by this Treaty, do not appear, and have not appeared in the Security of the Protestant Succession, and in his Majesty's peaceable Accession to the Throne, with the mutual Applause of her Subjects, in the Additions made to our Wealth by the great Quantities of Bullion lately coined at the Mint, by the vast Increase of Shipping, employed since the Peace, in the Fishery, and the Merchandize, and by the remarkable Rise of the Customs upon Export, and of our Manufacture, and the Growth of our Country, upon Import? For the Proof of which Particulars he refers himself to those Obedient Books, wherein an authentic Account of them is contained.

And as the Terms of the Peace were in these and other Respects manifestly profitable to Great Britain; so the said Earl begs leave humbly to request your Lordships, that they were communicated to the Parliament, and with their Concurrence agreed on; that the Peace, thus concluded, was afterwards highly approved by both Houses; that solemn Thanks were rendered to God for it, in all our Churches, as well as in the Churches of the United Provinces; and that her Majesty received, on this Subject, the hearty and unfeigned Congratulations of her People, from all Parts of her Dominions.

These being the real Effects, and this a true Representation of her Majesty's Conduct in the Affairs both of War and Peace, the said Earl begs leave to say, that he can be assured that her Majesty's Service, can be justly charged with betraying the Interests of her new Country, and of the Allies, by negotiating and promoting that Peace, which was, and (as he both good Reasons to believe) still continues to be very acceptable and advantageous to their Kingdoms. And, if the Peace itself be not condemned, and it be not even charged upon the said Earl as a Crime, that he advised her Majesty to conclude that Peace, (neither of which appear to him from the Articles) he humbly conceives, it is a particular and extraordinary Hardship upon him, that rough Draughts and Essays towards a Peace, with other Preliminary Steps in a Negotiation, all leading to an End, which he looks upon to be just and profitable, and which is not in any of the Articles alleged to be otherwise, should be brought into so many different Heads of Accusation against him. For supposing that, in the Process of so nice and difficult an Affair, subject to divers senseless Objections and Events, any improper Steps had been taken, which the said Earl does not admit, his altogether, on his Part, denies; yet, if Things were at last conducted to a right Issue, and ended in an honourable and advantageous Peace, there can be (as he conceives) no just Ground to find fault with the Measures made use of to compass it, because they formed, before the Accomplishment, to have a different Tendency; especially if it be considered, that the said Earl has been made by a Confederacy, where left Occasion was admitted for Jealousy among the several Parties, and less Reason given to complain, that every Nicety, required by the Letter of such an Alliance, was not strictly observed. And therefore he humbly hopes, that no Steps taken for obtaining a Peace, approved by the Wisdom of former Parliaments, shall by any succeeding Parliament be accounted criminal, unless it can be made appear, that those Steps were taken contrary to the Queen's Consent, or upon corrupt Views of private Advantage. But that no Charge of this Nature can be made good against him, he performs to affirm, with great Assurance; nor does he know of any other Person justly chargeable upon either of these Accounts.

And as a further Proof, that such was the Honour to serve her Majesty in the Negotiations of Peace, added with upright Views and Intentions, and without being conduct to themselves of any Failure in their Duty, either to their Queen or their Country, the said Earl craves leave to observe to your Lordships, that they never attempted to cover their Affects from public Censure by any Pardon or Indemnity, though they have very good Reason to believe, that had they judged not impugned themselves to have wanted such Security, it might (through the Goodness of the Queen) have easily been obtained.

Nor can he think it an Objection unto to be made, that, in few of the Articles which concern the Negotiations of Peace, the Charge is

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founded on any Breach of the Laws of Great Britain; but it is in most of them chiefly on the supposed Infracture of certain Treaties and Alliance with foreign Princes, or States; and he conceives that such Infractures of Public Treaties, where they do not particularly affect the Interests of Great Britain, being cognizable by the Laws of Nations only, and not by those of the Realm, are not wont to be examined into here at Home, and prosecuted as Criminal; but upon the Complaint of some Prince or State, proceeding by that Means to be injured, and lodging such Complaint in some reasonable Time with the Prince, by the Advice of whose Ministers and Servants such Injury is supposed to have been done. But he knows not, that any such Steps have been taken since the Peace, by any of the Powers concerned: On the contrary, he believes, that all the Allies, except the Emperor and Empire, made their Peace with the Enemy at the same Time the Queen did; and that none of them did afterwards complain to her Majesty (who survived the said Peace a Year and almost four Months) of any Hardships imposed upon them in it; that the Princes of the Empire, who contributed very little to the War, might have concluded their Peace upon reasonable Terms, at the same Time the other Allies did; and would probably have done it, if the Emperor, on his Part, had been willing to sign together with them, which, he is informed, as the Conclusion of any general Peace, has been seldom done; and particularly as the several Conclusions of the Peace of Münster, that of Nimegue, and that of Rastadt was not possible. And he submits it to your Lordships Consideration, whether the Emperor, having had all reasonable and equitable Satisfaction made him for his Pretensions to the Succession of the Spanish Monarchy, according to the Terms of the Grand Alliance, could have any just Reason to complain of the Queen's Ministers, or those of her Allies, for concluding a Peace, without infusing (on his Account) upon impossible Conditions; especially, when no Provision is made, or offered to be made, to reimburse her Majesty any Part of these vast Sums he had already expended, in Support of his Pretensions: which he failed of supplying his Queen, almost in every Part of the War, notwithstanding his new and great Acquisitions. But whether the Emperor, or any other of the Allies, had any just Ground of Complaint, or not, still the said Earl presumes to insist, that it ought to have been insisted to the Queen; who upon such Complaint, had the found any of her Servants justly blameable, as dissembling her Orders, or misbehaving by their Advice, into unjustifiable and dishonourable Measures, might have punished them forthwith as their Offences deserved. But nothing of this kind having been done, he humbly leaves it to be considered by your Lordships. Whether the Silence of the Powers concerned does not carry in it a strong Presumption, either that they had no real and just Ground of Complaint, in relation to the Terms of the Peace itself, or at least did not look upon the Minister of the Queen as any ways liable to Blame on that Account; and therefore he still again begs leave to express to your Lordships his Concern, that he should be charged as a Criminal by the Laws of this Land, for supposed Breaches of Treaties with foreign States, which never were complained of, as such, by those States themselves, during the Life of her Majesty.

He desires further to observe to your Lordships, that wherever he is charged with carrying on a private and separate Negotiation, 'tis all along understood, with regard only to the States of the United Provinces; no Step, that was communicated to them, being confessed, upon this Account: Whereas all the other Allies had, by virtue of their Treaties with the Queen, a like Right to a Communication of Councils; and her Majesty was under no Separation to act more in Concert with any one State than with them.

He does indeed allow it to have been most agreeable to Reason, and to the Interests of State, that the Queen should sit in a closer Conjunction with Holland than with any other of her Allies, because that, next to Great Britain, Holland bore the greatest Share in the Charge of the War. But then, he hopes it will be allowed also, that the States being more immediately in the Success of the War than England, and that England having furnished to a greater Share of the Burthen, in order to procure, not only a lasting Security for the States, but such as brought great Advantages in them, though no Benefit to England; it was very reasonable for the Queen to take care of the Interests of her own Kingdoms some other Way: And, since the Advantages she demanded from the Enemy were such as she might obtain without any Prejudice to the States, it was as lawful for her to negotiate this Matter without communicating it originally, and in the first Rise of it, to them, as it was for her, and the States, to concert their mutual Interests together, without the immediate and express Participation of the other Allies; which, being known to be done, without a Design to Defeat any of the main Ends of the Alliance, was never complained of by any of the Confederates.

And as for the Persons concerned previously with France, for the particular Interest of England, without any original Intention of Holland, the States were so far from Protesting against her Majesty's Ministers, and condemning her Conduct in this Respect, that their Minister professed several Times, in their Name, to have laid the Way, in the most difficult Part of the whole Negotiation, and to have done his utmost to facilitate the Conclusion of it, provided his Masters might have a Share in the Affairs of Canada, and Trade to the Spanish West-Indies; one of those Advantages, which France had discovered in his Willingness should be allowed previously and entirely to England.

The few general Observations the said Earl has thought fit to add in the Close of his Answer to the several Articles of his Impeachment, not only as his own necessary vindication, but also in Defence of her Majesty's Conduct in the negotiating and concluding a Peace, the perfecting of which she effected the greatest Happiness of the Reign. Upon Review of the Two-and-Twenty Articles with which he is charged, as he is not conscious of any Offence committed by him, with respect to any one of them, so it is with a particular Concern and Surprise that he reflects on these two, whereas he is accused of High-Treason, for endeavouring to procure Treason to France, and to deprive the States of that intended Part of their Benefits; and for procuring Spain and the West Indies to the Duke of Anjou, upon his Renunciation of the Crown of France: Referring himself to what he has said in his Answer to both these Articles, he here further affirms your Lordships (and thinks it is fully

entirely







*My Lords,* The Commons in their Charge set forth the particular Measures concerted and taken by the *Protestants* at the *Bar*, in compliance the *Destruction* of the *Common Cause of Europe*, and the *Protestant Succession* to the *Crown of their Realm*. And they Charge,

*That the Professor now before your Lordships did write, with his own  
hand, to the Excerpt of his Speech and Country, and shew'd and pro-  
posed the giving up to those Excerpts the important Laws and Statutes of  
England, together with some and the West-India,*

That she Sanctuary the Trade and Commerce of Great Britain to its common Enemy without the least regard to Advantage procured to these Kingdoms, and that she has endeavored to excite the most of the Crown's Subjects against her *Inveterate* Enemy (the Great and Faithful Ally of Great Britain) the *Unborn* Power of the Crown, and the *Explicit* grant of Parliament, in direct Violation of the *Good* Alliance, and contrary to Majesty's repeated Declarations from the Throne, and *Rev* plain and Instructions to her *Plenipotentiaries* at Utrecht

[illegible]

By *Lords*, The Commons have further charged the *Noble Lord* with Corruption, in illegally employing Monies appropriated by Parliament to the presenting of Parliamentary Esquires into the Army, to the Bishops and Scandal of Parliaments, Breach of the Great Oath, to the Abuse of the Goodness of his Sovereign, and the greatest Injustice and Oppression of her Subjects; and that he defrauded her Majesty of the *Fair Money* which by law he was entituled for the Support of the House and Dignity of the Crown.

[illegible]

*Lately*, These two *Gt or Perja* at the Bar *sdy*, by the most false as-  
serted Councils and Practices, *Boring* and gave up as a Sacrifice to their  
implicite Refinements of three courage and powerful Enemies, a *Pier* at  
*Greene People*, the faithful and *wild* Adm of *this Kingdom*, the *Brave*  
*MANS*, who, by his evil Mights recovered and takes of the *Po*  
*Prison*; and *Boring* did recoverable Country, and the  
of the *Brit* Nation; *Boring* was *Ran* off by the *Lords* of *Labour*, and  
for giving Protection to the *Duchess* of *York*, it therein most basely  
condemned by the pernicious and detestable Council of the *Prigineer* at the  
Bar.

This your Lordships have a View of the Guilt in which the Treason and other Crimes committed by the Prisoner at the Bar have been guilty in: And in it with Affluishment the Commons observe, that he did not use any Attempt to appease the Memory of his Royal Majesty with the doing of what was intended during his Administration, with his being guilty upon his Bar had elicited against him Treason, and the Guilt of his Country, thereby stamping to itself upon the Justice of the House of Commons, and to call an Oath upon their Proceedings against him. But we doubt not your Lordships Vindication of the Honor of his Majesty, and the Proceedings of the Commons in this Prosecution.

The Geneva think it their Duty to express their utmost Abhorrence to the traitorous and wicked Proceedings of the *Printer in the Bay*, who, in their Refinement against him, is the Author and Promoter of the same. They have found him *Assailing and Betraying the Honour of his Majesty*, who is a Prince of the most illustrious and beneficent, and most Peaceable and unspotted Persons. They have found him *deliberately* and *deliberately* weakening *Us* and our *Allies*; *Brutally* our *Goodwill*, *undermining* our *great* *Glory*, *Fortitude* and *Defences* of Europe, and her *us* *Wealthy* and *flourishing* *Universities* to the *Common* *Enemy* in these *OPEN* *WAR*: And contriving and effecting the *Dissolution* of *us* *small* and *most* *valuable* *Confederacy* that ever formed and united in *the* *Interest* of the *Protestant* *Interest*, and the glorious *Reformation* of Europe.

They have found how unbecomingly to deprive their Kingdoms of the Blessing left to their Hopes, and which, by the Providence of God, they now enjoy, the most auspicious Government of his great Majesty the Great and Right of Prussia, whose Magnanimity, Wisdom, Power and other princely Virtues, have left the Imperial Throne of Great

Join with a Luffe unknown in any former Age. In this Attempt, the  
Vain Lord at the Bar wickedly endeavour'd to defeat us of our happy  
Spectacle of saving Felicity, in a long Sacrifice of Precious Prison in  
the Prison of the most Excellent Majesty, the most illustrious Prince  
and Pious of France, our dear Son, bravely and valiantly in the  
and Accidents for making a generous and free People happy: On  
the Continuance of which Sacrifice, next under God, all that is Dear  
and Valuable to us must depend.

My Lords, The Commons jolly Rejoice and Deride the Reproach brought upon the Faith and Honour of their Country, by the great bold Minifter at the Bar; But they generall commend your Lordships self to be a Terror to all Evil doers, how Great force; and that you Lordships can never fail to do Justice to your injured Country, upon all Populish Complaines, who he is wait to deliver you Rejoice, Amen and Laudum.

Sir Joseph Jeph. My Lords, by the Commands of the House of Commons, I appear to make good that Part of the Charge against the Noble Lord at the Bar, w<sup>ch</sup> is contain'd in the last Article.

L. H. STANFORD, Esq., Clerk of the House of Commons, presents the following Bill to the House of Commons:

*Lords. A. 1. 17.*  
*L. 11. Surin.* This House is adjourn'd to the Chamber of Parliam<sup>nt</sup>.  
And being adjourn'd accordingly, the Lords and others retir'd in the

And the House being Read, the Question was moved and fixed,  
That the Commons be not admitted to proceed in order to make good  
the Articles against Robert Earl of Oxford and Earl Mortimer for High  
Treason and Misfeasance, till Judgment be first given on the Articles  
for High Treason :

And a Duke ensuing thereupon,  
The previous Question was put, whether that Question shall be now  
asked?

It was Replied in the Affirmative.  
And the main Question being accordingly put, viz.

That the Commission be not advised as yet, in order to make good the Amoy's against Baker, Earl of Oxford and Earl Marquis for High crimes and Misdemeanors, till Judgment be first given of the Amoy's

Ordered, That the said Resolution be communicated to the Commons.

A *Moffage* was sent to the *House of Commons* by Mr. *Browne* and Mr. *Osborne*, two *Justices of the Court of Chancery*, to acquaint them

The Messenger, conceal'd, and acquainted the House, that they had delivered their Message, and that the Commons were preparing to go.

Then the House was again adjourned to the *Speaker's Hall*, and the Lords, being there seated, and the House resumed, the Lord High Steward acquainted the Managers for the Commons, that their Lordships had come to a Resolution, that the Commons be not admitted to proceed in order to make good the Articles against Robert Earl of Oxford and Earl Arundel for high Crimes and Misdemeanours, 'till Judgment

See *W. J. H. Thompson*. My Lords, the Managers for the Commons conceive it to be the undoubted Right of the Commons to proceed in the

own Method in Maintenance of the Articles exhibited by them; and do apprehend that this Resolution of your Lordships may be of such fatal Consequence to the Rights and Privileges of all the Commons of Great

*Witnesses*, that they cannot take upon them to proceed any further, without referring to the House of Commons for their Directions herein.

Then the House adjourned to the Chamber of Parliament. And being

The Earl of Oxford was ordered to be Remanded to the Tower, and he brought again to the Bar in *Windsor Hall* To-morrow at Eleven o'clock.

*Die Martin* 25 Juni, 1917.

THE House of Lords being met as usual in the Chamber of Parliament, it was there Ordered, that a Message be sent to the House of Commons to acquaint them that the Lords have Ordered Answer to the Message from the Commons, touching the Petition of the Merchants of the City of London, touching the Petition of the Merchants of the City of London, touching the Petition of the Merchants of the City of London.

Be of Oxford and Earl Mortimer to be brought to the Hay of their Heads  
W'fenger-Hall this Day at Eleven o'Clock in the Forenoon, is ord  
to proceed further on the Trial of the said Earl.



*Die Jure 27 Junii, 1717.*

THE House of Lords being met as usual, a Message was sent from the House of Commons by the Lord Mordaunt and others, to desire a Conference with the House of Lords, in relation to Proceedings in the Prosecutions of Impeachments. To which the House agreed.

And the Commons were called in and told, that the Lords do agree to a Conference as is desired, and appoint in preference the *Peined Chamber*.

Then several Lords were named Managers of the Conference.

The House being informed, that the Commons were ready for the Conference, in the *Peined Chamber*.

The House was adjourned during Pleasure, and the Lords named as Managers went to the Conference: Which being ended,

The House was resumed.

And the Lord Privy Seal reported, that they had been at the Conference, and sent Mr. Gower and other Managers, for the Commons, who delivered to their Lordships a Paper as follows.

The Commons having taken into their Consideration your Lordships Resolution, communicated to their Managers, relating to the Proceedings on the Trial of Robert Earl of Oxford and Earl Mordaunt, and being desirous as far as in them lies to maintain a good Correspondence with your Lordships; have desired this Conference, and have commanded us to acquaint your Lordships, that they conceive it to be the undoubted Right of the Commons to impeach a Peer, either for High-Treason or for High Crimes and Misdemeanors, or, if they see Occasion, to mix both the one and the other in the same Accusation.

The Impeachment preferred against Robert Earl of Oxford and Earl Mordaunt, is not contained Accusation, consisting of High Crimes and Misdemeanors, and also of Charges of High-Treason. The Facts on which the Articles preceding these of High-Treason are grounded are laid together in Order of Time, and follow one another successively, in the manner they were committed.

As the Commons thought this the most natural Method for exhibiting the several Articles against the said Earl, they were exhibited. That they should proceed in the Proof of these several Facts after the same Method; since it is manifest, that in laying open the Course of such a wicked Administration, the preceding Facts do give Light to those which follow; and that the Proof of several Articles of the High Crimes and Misdemeanors would necessarily lead to the Proof of those of High-Treason.

Your Lordships received these several Articles of Impeachment without making any Exception against the Form in which they were exhibited. The said Earl made his Answer to them in the same Order, and has now been indicted to be tried in any other Method; so that the Commons are surprised to find a Stop put to their Prosecution, by an Objection which has never been started by the said Earl, and which your Lordships had given them to little Reason to expect.

To this must be added, that as the Commons only are Matters of the Evidence, and as upon that Account they are best able to determine in what Method to proceed for the Advantage of the Prosecution, in the Event of which all the Commons of Great Britain are so highly concerned.

To which they further add, that they for no Reason but that your Lordships may as well invert the whole Order of the Articles, as prefer to the Commons their particular Articles on which they are first to proceed, which will necessarily produce such a Confusion, both in the Facts and Evidence, as is by no means consistent with that Clarity and Perspicuity in which the Commons think this Affair ought to appear.

The Commons, upon examining Precedents, do find scarce Precedents of Impeachments for High-Treason and other High Crimes and Misdemeanors, in the same Accusation; and do not find that the Lords ever objected to such Proceedings, or ever gave Judgment upon any particular Article of an Impeachment before the Commons had gone through and concluded their Evidence upon all the Articles, or for many of them as they thought fit, and the Commons are at a Loss to conceive what Arguments or Precedents can be brought to support the Resolution of your Lordships, to give Judgment upon one Part of the same Accusation, referring the other Part for a subsequent Trial; as they are to know what your Lordships mean by admitting the Commons to proceed upon the Articles for High Crimes and Misdemeanors, after the Judgment is given upon the Articles for High-Treason, supposing the Judgment proper for High-Treason should be given against the said Earl.

For these Reasons the Commons assert it as their undoubted Right to proceed on the Trial of Robert Earl of Oxford and Earl Mordaunt, after the Method in which their Managers were proceeding, when interrupted by your Lordships Resolution.

The Reasons delivered by the Commons at the Conference were read by the Clerk.

And after Debate, and Reading the Resolution of this House communicated to the Commons on Monday last, viz.

That the Commons be not admitted to proceed in Order to make good the Articles against Robert Earl of Oxford and Earl Mordaunt, for High Crimes and Misdemeanors, 'till Judgment be first given on the Articles for High-Treason:

The Question was put, Whether to insist on the said Resolution?

It was refused in the Affirmative.

Then it being proposed that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Resolution for insisting:

And a Question being stated thereupon,

It was moved to add these Words to the said Question, viz. [And also to prepare such Reasons as shall be thought proper to be then used in Maintenance thereof.]

And after Debate, the Question was put, Whether those Words shall be added to the said Question?

It was refused in the Affirmative.

Refused upon the Question, and ordered, that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Resolution of this House for insisting on their

Lordships Resolution above-mentioned, and also to prepare such Reasons as shall be thought proper to be then used in Maintenance thereof.

Ordered, That all the Lords present be the said Committee.

Then it being proposed, that the Commons meet immediately. And the same being objected to:

The Question was put, Whether the Committee shall withdraw and sit immediately?

It was refused in the Negative.

Ordered, That the said Committee, or any Seven of them, meet Tomorrow at Ten o' the Clock in the Forenoon in the Prince's Lodgings near the House of Peers, and to adjourn as they please.

Ordered, That the Lieutenant of the Tower do take back the Earl of Oxford and Earl Mordaunt, and bring the said Earl to the Bar of this House in Westminster-Hall, on Saturday next at Eleven o' the Clock, in order to proceed further on the Trial of the said Earl.

*Die Jure 28 Junii, 1717.*

THE Lords being assembled in their House as usual, a Message was sent to the House of Commons by Mr. Fillion and Mr. Adair, two of the Members of the Court of Chancery, to acquaint them that the Lords do desire they will continue sitting for some Time.

The Lord Treasurer reported from the Committee appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Resolution of this House, for insisting on their Lordships Resolution communicated to the Commons on Monday last, and also to prepare such Reasons as shall be thought proper to be then used in Maintenance thereof, that the Committee have prepared Reasons accordingly, as follow, viz.

Their Lordships, in order to preserve a good Correspondence with the House of Commons (which they shall always endeavour so to do as far as lies in their Power) have desired this Conference upon the Subject-Matter of the last Conference, and have desired us to acquaint you, that their Lordships judge it a Right inherent in every Court of Justice, in order and direct such Methods of Proceedings as such Courts shall think fit to be observed in all Causes depending before them, which can have no Influence to the Prejudice of Justice, and where such Methods of Proceedings are not otherwise limited by any positive Rule. The Power of Judicature on all Impeachments being a Right unquestionably inherent in their Lordships, and it not being determined by any positive Rule, whether the House of Commons may proceed to make good the several Articles exhibited for Misdemeanors, so much Order as they shall think fit, before they proceed to make good the Articles exhibited for High-Treason; and their being no Precedent where the Commons, upon Trial of any such Impeachments, attempted to proceed in the said Trial to make good any of the Articles contained in such Impeachment for High Crimes and Misdemeanors, their Lordships considering the Nature of the Impeachment upon depending before them, and the Method wherein the Managers for the House of Commons were beginning to proceed upon the Trial to make good the said Article thereof, which is a Charge for High Crimes and Misdemeanors only; and also considering the very different Methods of Proceedings on an Impeachment of a Peer for High-Treason, as well before, as upon the Trial thereof, and the Circumstances attending such a Trial, from the Proceedings on the Impeachment of a Peer for High Crimes and Misdemeanors, and the known Circumstances attending such a Trial, thought themselves obliged to come to the Resolution communicated to the Commons on the Twenty-fourth Instant, as well as the doing Justice in the Cause depending before them, as for the preventing a new Precedent to be made on this Trial, in Conference whereof a new and unjustifiable Form of Proceeding against a Peer upon an Impeachment for High-Treason and High Crimes, might be introduced at his Trial upon these Articles in which he is charged for High Crimes and Misdemeanors only, to the Prejudice of the Person of Great Britain in all Times to come, viz. the Trying a Peer on Articles for High Crimes and Misdemeanors without the Bar, the detaining in Custody a Peer so accused, and repeated Commitments of him to the Tower during the Time of such Trial, and subjecting a Peer to as ignominious Circumstances on his Trial, on Articles for Misdemeanors, as if he were then on his Trial on Articles for High-Treason: Whereas a Peer on his Trial on Articles for Misdemeanors only, ought not to be deprived of his Liberty, nor imprisoned from Parliament, and is entitled to the Privilege of sitting within the Bar during the whole Time of his Trial: In all which Particulars the known Rule of Proceedings in such Cases may be evaded, though a Peer be brought to his Trial on several Articles exhibited against him for High Crimes and Misdemeanors, and for High-Treason mixed together, and the Commons be admitted to proceed in order to make good the Articles for High Crimes and Misdemeanors before Judgment be given upon the Articles for High-Treason. Their Lordships have fully considered the Matter offered to them by the House of Commons at the last Conference relating to the Proceedings against Robert Earl of Oxford and Earl Mordaunt; and their Lordships are fully satisfied, that the Resolution they have made and communicated to the Commons on the Twenty-fourth Instant is just and reasonable; and that the House of Commons are not put under any real Inconvenience thereby in carrying on their present Prosecution. Their Lordships have commanded us so to let you know that they do insist on their said Resolution, viz. That the Commons be not admitted to proceed in order to make good the Articles against Robert Earl of Oxford and Earl Mordaunt, for High Crimes and Misdemeanors, 'till Judgment be first given upon the Articles for High-Treason.

Which Report being read by the Clerk was agreed to by the House.

Then a Message was sent to the House of Commons by Mr. Fillion and Mr. Adair, to acquaint them, that the Lords do desire a present Conference in the *Peined Chamber*, upon the Subject-Matter of the last Conference.

Ordered, That the Managers of the last Conference be the Managers of this Conference.



The Messengers sent to the House of Commons, return Answer, That the Commons will give a perfect Conference as desired.

The House being inform'd, that the Commons were ready in the Painted Chamber for the Conference, the Names of the Managers were read: And,

The House was adjourn'd during Pleasure, and the Lords named as Managers went to the Conference, which being ended, the House was inform'd.

The Lord Chamberlain reported, that the Managers had been at the Conference, and delivered to the Commons what they were directed.

A Message was sent to the House of Commons by Mr. Folkes and Mr. Alder, to acquaint them, That the Lords have ordered the Earl of Oxford to be brought to the Bar of this House in Wyndham-Hall To-morrow at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the said Earl.

A Message was brought from the House of Commons by Mr. Yonge and others, to desire that this House will continue sitting for some Time; to which the House agreed.

And the Commons were called in, and told, That the Lords will continue sitting for some Time, as is desired.

Ordered, That the Lieutenant of the Tower do bring the Earl of Oxford to the Bar of this House in Wyndham-Hall, on Monday next at Eleven o'Clock, in order to proceed further on the Trial of the said Earl.

Die Sabbati 30 Junii, 1717.

THE House of Lords being assembled as usual in the Chamber of Parliament, a Message was brought from the House of Commons by Mr. Paken and others, to desire a free Conference with this House upon the Subject-Matter of the last Conference.

Ordered, That this House will take an Answer by Messengers of their new.

The Messengers were called in, and acquainted therewith.

The House proceeded to take the said Message into Consideration. And after Debate, and reading out of the Journal the Proceedings at the several Conferences in the Case of the Lord Viscount Mordaunt, upon his impeachment on the Year One Thousand Six Hundred and Sixty-six;

The Question was put, Whether to give a free Conference with the House of Commons, as is desired, upon the Subject-Matter of the last Conference? It was resolv'd in the Negative.

Ordered, That a Message be sent to the House of Commons, to acquaint them, That the Subject-Matter of the last Conference concerning a Point of Judicature determined by this House after the Trial begun, the said Lordships do not think fit to give a free Conference on the Subject-Matter of the last Conference, as is desired by the House of Commons.

And also, That another Message be sent to the House of Commons, to acquaint them, That their Lordships have ordered Robert Earl of Oxford to be brought to the Bar of this House in Wyndham-Hall, on Monday next at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the said Earl; and Mr. Haydel and Mr. Denner, two of the Masters of the Court of Chancery, were sent accordingly with the said Messages.

Die Lunæ 1 Julii, 1717.

THE Lords being assembled in their House as usual, and this Day being appointed to proceed further on the Trial of Robert Earl of Oxford and Earl Mordaunt in Wyndham-Hall, the House (according to Order) was called over by the Clerk; and the Names of the absent Lords being set down (pursuant to the last Order) they were again called over, and read.

A Message was brought from the House of Commons by Mr. Gibson and others, to desire their Lordships to defer going down into Wyndham-Hall for some Time.

Ordered, That the Messengers of the House of Commons be called in, and told, That the Lords have considered their Message, and that their Lordships will defer going down into Wyndham-Hall for some Time, as is desired.

And the Messengers were called and acquainted accordingly.

A Message was brought from the House of Commons by Mr. Croger and others, to desire a Conference with this House upon the Subject-Matter of their Lordships Message relating to the free Conference desired by the Commons.

To which the House agreed.

And the Messengers of the House of Commons were called in, and told, That the Lords do agree to a Conference as desired, and appoint it presently in the Painted Chamber.

Ordered, That the Managers of the last Conference be the Managers of this Conference.

The House being inform'd, That the Commons were ready in the Painted Chamber.

The Manager Names were read, and the House was adjourn'd during Pleasure, and the Lords named as Managers went to the Conference; which being ended, the House was inform'd, and the Lord Privy-Seal imposed the Effect of the Conference, which was, that the Managers for the Commons had delivered to their Lordships a Paper, containing as follows, viz.

The Commons having taken into Consideration your Lordships Message, viz.

That your Lordships did not think fit to give a free Conference on the Subject-Matter of the last Conference, as was desired by the Commons, and they being still desirous, to the utmost of their Power, to preserve a good Correspondence with your Lordships, have resolv'd this Conference; and have commanded us to acquaint your Lordships, that they are very much surpris'd to find your Lordships deny a free Conference, after your Lordships had already agreed to a Conference desired by the Commons on the said Subject-Matter, and after your Lordships have on your Parts also desired a Conference upon the same Subject.

That free Conferences are the most salutary and establish'd Methods for

adjusting the Differences that have at any Time arisen between the Two Houses, and, as the Commons conceive, is the only Method to preserve a good Correspondence between them on such Occasions, which as this Time is of the highest Importance, because a Misunderstanding on this Account would tend to defeat the Trial of the Impachment of the Commons.

That the Commons conceive clearly, that the Subject-Matter of the last Conference is not a Point of Judicature, but a Point relating only to the Prosecution of the Commons, having arisen before any Matter of Judicature had come before your Lordships upon the Trial.

For which Reasons the Commons conceive, that your Lordships ought not to have denied them a free Conference upon the Subject-Matter of the last Conference.

Which being read by the Clerk;

A Message was sent to the House of Commons by Mr. Ordler and Mr. Browning, two of the Masters of Chancery, to desire they would continue sitting for some Time.

Then the House proceeded to take into Consideration the Matter delivered by the Commons at the last Conference.

And it being proposed to insist on denying a free Conference with the Commons.

And Debate thereupon;

The Question was put, Whether to insist on denying a free Conference upon the Subject-Matter concerning which a free Conference was desired by the Commons?

It was resolv'd in the Affirmative.

Ordered, That a perfect Conference be desired with the Commons in the Painted Chamber on the Subject-Matter of the last Conference, and that the Commons be there acquainted, that the Lords having taken into Consideration the Subject-Matter of the last Conference, their Lordships do insist on denying a free Conference upon the Subject-Matter concerning which a free Conference was desired by the House of Commons.

Accordingly a Message was sent to the House of Commons by Mr. Ordler and Mr. Browning, to desire a perfect Conference in the Painted Chamber on the Subject-Matter of the last Conference.

The Messengers returned, and acquainted the House, that the Commons do agree to a Conference, as desired.

Ordered, That the Managers of the last Conference be the Managers of this Conference.

The House being inform'd, that the Commons were ready in the Painted Chamber, the Manager Names were read. And

The House was adjourn'd during Pleasure, and the Lords appointed Managers went to the Conference; which being ended, the House was inform'd, and the Lord Privy-Seal reported, that they had been at the Conference, and acquainted the Commons as above directed.

A Message was sent to the House of Commons by the former Messengers, to desire they will continue sitting for some Time.

The Messengers being return'd, acquainted the House, that the Commons will continue sitting for some Time, as desired.

Then it being mov'd, that a Message be sent to the House of Commons, that this House intends presently to proceed further on the Trial of the Earl of Oxford in Wyndham-Hall.

And it being also mov'd, that the House do now adjourn during Pleasure, The Question was put, Whether now to adjourn during Pleasure? It was resolv'd in the Affirmative.

The House was accordingly adjourn'd during Pleasure.

The House was resolv'd.

A Message was sent to the House of Commons by Mr. Ordler and Mr. Browning, to acquaint them, that this House intends presently to proceed further on the Trial of Robert Earl of Oxford and Earl Mordaunt in Wyndham-Hall.

Then it being proposed provisionally to consider the Form of a Proclamation proper to be made in Wyndham-Hall for the Appearance of the Prosecutors, if they should not be then present to proceed, in order to make good their Impachment against the said Earl of Oxford and Earl Mordaunt;

And thereupon the Proclamation made the Seventeenth of June, One Thousand Seven Hundred and One, at the Trial of the Lord Denner, being read;

It was agreed by the House, that when the Lords are gone down into Wyndham-Hall, immediately after the Lords House shall be call'd in Wyndham-Hall, and Proclamations for Silence made, and Proclamation for bringing the Prisoner to the Bar, if the Managers of the House of Commons shall not be there, Proclamations be likewise made in these Words, viz.

Whereas Robert Earl of Oxford and Earl Mordaunt stand impeach'd of High-Treason, and other High Crimes and Misdemeanors, by the House of Commons, in the Names of themselves and of all its Members of Great Britain, all Persons concerned are to take Notice, that he was brought to his Trial, and they may now come forth at order to make good their said Charge.

Then the House was adjourn'd into Wyndham-Hall, and the Lords being come down into Wyndham-Hall, and seated in the usual Manner about Five in the Evening;

L. H. Steward. My Lords, the House is resolv'd—Make Proclamation for Silence.

Serj. at Arms. O Yes, &c. (as before.)

L. H. Steward. Make Proclamation for the Lieutenant of the Tower of London to bring the Prisoner to the Bar.

Serj. at Arms. O Yes, &c. Lieutenant of the Tower of London, bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

The Earl of Oxford and Earl Mordaunt being brought to the Bar accordingly, and the Commons not being present;

L. H. Steward. Make Proclamation according to the Order of the House of Lords.

Then the Serjeant at Arms made the following Proclamation according to the said Order of the House of Lords, the Clerk of the House of Lords reading it to him as follows:—



*Serj. at Arms.* Whereas Robert Earl of Oxford and Earl Mortimer stands impeached of High-Treason, and other High Crimes and Misdemeanors, by the House of Commons, in the Name of themselves and all the Commons of Great Britain, all Petitioners concern'd are to take Notice, that he now stands upon his Trial, and they may now come forth in order to make good their said Charge.

After about Twenty Minutes Silence, the Lord Gayford mov'd for an Adjournment to the House above.

*L. H. Steward.* Do your Lordships hear what is mov'd? Is that your Lordships Pleasure?

*Lords.* Ay, my.

*L. H. Steward.* This House is adjourn'd to the Chamber of Parliament.

And being return'd in the same Order they went down.

The House was refused.

Then it was propos'd, that Robert Earl of Oxford and Earl Mortimer be acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained, and that the said Impeachment be dismiss'd.

And a Question being filed thereupon, it was mov'd to leave out these Words (viz. and other High Crimes and Misdemeanors;) and thereupon the Question being put,

Whether these Words shall stand part of the Question?

It was Refused in the Affirmative.

Then the said Question being again filed,

*Ordered,* That the Question now filed be the Question to be put in Westminster-Hall.

Then the Lord High-Steward desiring that further Directions might be given concerning the farther Proceedings at the Trial of the said Earl of Westminster-Hall, it was agreed by the House, and *Ordered,* That in Westminster-Hall the Lord High-Steward shall read the Question as already Resolv'd; and then call to the Lord Justices, and to every other Lord then present, and ask him his Opinion, whether Consent or not Consent; and that every Lord shall stand up when asked so, and give his Vote, Consent or not Consent; and that the Lord High-Steward having taken the Votes, shall declare the Majority; and if the Majority be in the Affirmative, the Lord High-Steward is to declare the same, and particularly to the Earl of Oxford, as in and by what is brought to the Bar, and shall immediately pronounce the Judgment of the House in the Form following, (viz.)

It is concluded, ordered, and adjourn'd by the Lords Spiritual and Temporal in Parliament assembled, that Robert Earl of Oxford and Earl Mortimer shall be, and is hereby acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained; and that the said Impeachment shall be, and is hereby dismiss'd. And shall immediately direct the Lieutenant of the Tower that to discharge his Prisoner.

And after that to Dissolve the Commission.

The House was then again adjourn'd into Westminster-Hall, and being there refused.

*L. H. Steward.* Make Proclamation for Silence.

*Serj. at Arms.* O Yes, my. (as before.)

*O Yes.* My Liegeant of the Tower of London, bring forth your Prisoner to the Bar.

*L. H. Steward.* My Lords, the Clerk acquaints me, that for want of Light in the Passage he could not take an exact List of your Lordships; I therefore desire that he may now take a List of the Lords present.

Then the Clerk took a List of the Lords present.

*L. H. Steward.* If your Lordships think fit, your Lordships Names shall now be called over.

*Lords.* Ay, my.

Then their Names were called over.

*Lords.* The Earl of Oxford is not yet gone from the Bar.

Then the Earl was ordered to withdraw from the Bar. And being withdrawn,

*L. H. Steward.* My Lords, I shall now state the Question, upon which your Lordships are to give your Votes; it is this, That Robert Earl of Oxford and Earl Mortimer be acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained, and that the said Impeachment be dismiss'd.

*L. H. Steward.* The Clerk should stand near the Lords with Candles, as they give their Votes.

Then the Lord High-Steward put the Question to their Lordships, beginning at the youngest Baron, in Manner following.

*L. H. Steward.* My Lords, your Lordship has heard the Question filed, what says your Lordship in your Lordship Consent, or not Consent?

The Names of the Lords present, who were all Consent, are as follow.

## BARONS.

*Willingly of Every*

*Assent*

*Assent*

*Assent*

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## BISHOPS.

*Willingly of Every*

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*Assent*







new Laws, yet it alters not the Nature of the Offence; and the Indictment must stand to the intent to be done *per vim et contra iustitiam*, upon the High Sea, and must have both the Words *Violent et contra*; and therefore in a *Pecunia* of all Persons doth not extend to this Offence, but the same ought to be specially named.

Thus having explained to you the Nature of the Offence, and the *Indictment* thereof, as being destructive of Trade and Commerce, I hope you will not see any Argument in you, to persuade you to a foolish Discharge of your Duty, in the bringing such Offenders to Punishment. And indeed, the Indictment of this Person here of late to their great Cost and Damage, sets the Evil of Piracy, and the Mischief and Injustice done by Pirates; when many an innocent Person had so much Advantage as to be at our Bar, in sight of our Town, and to seize and take several of our Ships board covered and outward.

And then had the Confidence to lead in his Insolent Demands for what he wanted, with Threats of murthering our People he had on board him, if they were not complied with. Which was putting the Province under Contumacious.

And the Success he had in going off from our Coast with Impunity, encouraged another of these Sort of Prigs to come upon our Coast, and take our Ships.

And this very Company, which will now be charged before you with the Crime of Piracy, their *Regularity*, with easy, if not all of the Company, were belonging to that Crew, which first enlisted us. And persisting upon their former Success and Impunity, had the Confidence to lay upon our Coast to fit their ship, and to go on shore at their Will and Pleasure, designing, as we had had just Reason to suppose, that when all Things were suited for their mischievous Design, to come again to cruise before our Bar, and take our Ships.

And therefore upon the receiving these Accounts, it was high Time for the Government to sit out a Force against the Pirates, and to endeavor to suppress them, in order to support our Trade and Commerce, which otherwise must have been severely ruin'd.

And being under such a Necessity of having Forces raised for that Purpose, we cannot sufficiently commend and honour the Zeal and Bravery of those Persons, who so willingly and readily undertook that Expedition against the Pirates; and so gallantly acted their Part when they engaged them.

But it will not be for me to say any more upon that Subject, by reason of the near Relation I stand in to the Commander in Chief in that Expedition; and who is known to you all to have so well acted his Part therein, that as it is not proper, so he needs not my Commendations.

But then I must not omit mentioning to you, that in this *disorder* made upon these Coasts of *Marshall's*, many of our People lost their Lives in the Discharge of their Duty to their King and Country, and who fell by the Hands of these miscreant and murthering Crews, which will now be brought before you. And the Blood of these murdered Persons will cry for Vengeance and Justice against these Offenders.

And therefore I hope the Consideration of doing Justice to those Persons who were kill'd in the Service of their Country, will make you to use your Diligence in bringing the Criminals to Punishment, without which the Blood of these Persons will in a great measure be required at our Hands.

I need not expatiate to you upon the Heinousness of the Sin of Murder; a Crime which carries its own natural Horror and Guilt along with it: for that it is altogether needless for me to aggravate it; and the manifest Injustice and Evil of which is evident to all Persons, even by the Light of Nature: So that there is no Nation so barbarous, but by their universal Practice do conform to the Equity and Justice of that ancient Law of God, that, *He that killeth a Man shall be himself killed*. Gen. ix. 6.

Indeed, I freely grant, that the Greatness of the Crimes the Persons are charged with, should make you the more careful in your Enquiry, and to avoid any Error or Mistake on both Extremes; that as you would not condemn the innocent, so he should that you do not acquit the guilty, always remembering what the Wise Man saith, that *He that payeth the Wicked as well as he that doth him wrong, will have an Abomination in the Lord*. Prov. xxv. 21. See Ch. xxv. p. 24.

I have only then to add, that you being a Grand Jury, your Business is not to try the Prisoners, but to consider whether or no, by the Evidence, there is that probable Proof of the Persons being guilty of the Fact charged upon them, as that they ought to be put upon their Trial for the same.

An Indictment found by you being virtually but a legal Accusation, there being another Jury to pass upon them.

But on the other Side, tho' your finding the Bill of Indictment is not conclusive to the Prisoners, but that they will have a Trial, and be heard in their own Defence before another Jury, which properly are said to try the Prisoners, and pass between the King and them upon their Lives or Deaths; nevertheless, you ought to be cautious and diligent in your Enquiry, and not rashly and carelessly find a Bill of Indictment against Persons, and put them upon the Hazard of a Trial for a capital Crime.

But as to their *Indictment*, that will now be brought before you, I am very well assured that the Proof you do not acquit the guilty, always remembering what the Wise Man saith, that *He that payeth the Wicked as well as he that doth him wrong, will have an Abomination in the Lord*. Prov. xxv. 21. See Ch. xxv. p. 24.

Thus having sufficiently explained to you what is likely to come before you, I shall now dismiss you to your Business.

Then the Court adjourn'd till the Afternoon.

The Court met according to Adjournment.

And the Grand Jury being called over, a Bill of Indictment was given to them against *Stede Bonnet*, *Robert Tucker*, *Edward Robinson*, *Ned Patterson*, *William Sear*, and *John Bayly*, for feloniously and piratically taking the sloop *Forward* with her Goods, Capt. Peter Monmouth, Commander.

Then the Court adjourn'd till Wednesday Morning.

Wednesday, October the 25th, 1718.

The Court met according to Adjournment.

THE Grand Jury being called over, a Bill of Indictment was delivered to them against *David Harist*, *John William Smith*, *Thomas Carmichael*, *John Thomas*, *William Morrison*, *William Lewis alias Emy*, *Lancelot Parry*, *Henry Perry*, and *John Lewis*, for feloniously and piratically taking the sloop *Forward*, with her Goods, Capt. Peter Monmouth, Commander.

And another Bill of Indictment against *William John alias W. J.*, *Alexander Anand*, *George Rife*, *George Duxin*, *Thomas Nichols*, *John Roberts*, *Matthew King*, *David Perry*, and *Henry Bayly*, for the same Fact, in taking Capt. Monmouth.

And another against *James Robb* alias *Ratle*, *James Muller* alias *M. M.*, *Thomas Price*, *John Lopez*, *Zachariah Long*, and *James W. H.* for the same Fact.

Then the Grand Jury returned, finding *Wills Fore* on the Bill of Indictment against *Stede Bonnet* alias *Edward alias Thomas*, *David Harist*, *Edward Robinson*, *Ned Patterson*, *William Sear*, and *John Bayly*, for feloniously and piratically taking the said sloop *Forward*, with her Goods, Capt. Peter Monmouth, Commander.

On the Bill of Indictment against *David Harist*, *John William Smith*, *Thomas Carmichael*, *John Thomas*, *William Morrison*, *William Lewis alias Emy*, *Lancelot Parry*, *Henry Perry*, and *John Lewis*, for the same Fact, in taking Capt. Monmouth.

On the Bill of Indictment against *William John alias W. J.*, *Alexander Anand*, *George Rife*, *George Duxin*, *Thomas Nichols*, *John Roberts*, *Matthew King*, *David Perry*, and *Henry Bayly*.

A Bill of Indictment against *James Robb* alias *Ratle*, *James Muller* alias *M. M.*, *Thomas Price*, *John Lopez*, *Zachariah Long*, and *James W. H.*, for the same Fact.

Then the Court proceeded to arraign *Robert Tucker*, *Edward Robinson*, *Ned Patterson*, *William Sear*, and *John Bayly*, for the same Fact, in taking the sloop *Forward*, with her Goods, Capt. Peter Monmouth, Commander.

Who all pleaded Not Guilty.

The Court then delivered another Bill of Indictment to the Grand Jury against *Stede Bonnet* alias *Edward alias Thomas*, *David Harist*, *Edward Robinson*, *Robert Tucker*, *William Sear*, *John Bayly*, *Ned Patterson*, *John Williams*, *Thomas Carmichael*, and *John Thomas*, for feloniously and piratically taking the sloop *Forward*, with her Goods, Capt. Peter Monmouth, Commander.

Another Bill of Indictment against *John Rife*, *Matthew King*, *David Perry*, *Henry Perry*, *James Robert alias Ratle*, *James Muller* alias *M. M.*, *Thomas Price*, *John Lopez*, *Zachariah Long*, and *James W. H.*, for the same Fact, in taking Capt. Ratle.

And another against *William Morrison*, *William Lewis alias Emy*, *Lancelot Parry*, *Henry Perry*, *John Roberts*, *John Lewis*, *William John alias W. J.*, *Alexander Anand*, *George Rife*, *George Duxin*, and *Thomas Nichols*, for the same Fact.

Then the Court proceeded to arraign *John William Smith*, *Thomas Carmichael*, *John Thomas*, *William Morrison*, *William Lewis alias Emy*, *Lancelot Parry*, *Henry Perry*, and *John Lewis*, for feloniously and piratically taking the sloop *Forward*, with her Goods, Capt. Peter Monmouth, Commander.

Who all pleaded Not Guilty.

Then the Court adjourn'd till Thursday Morning.

Thursday, October the 26th, 1718.

The Court met according to Adjournment.

THE Grand Jury returned, finding *Wills Fore* on the Bill of Indictment against *Stede Bonnet* alias *Edward alias Thomas*, *David Harist*, *Edward Robinson*, *Robert Tucker*, *William Sear*, *John Bayly*, *Ned Patterson*, *John Williams*, *Thomas Carmichael*, and *John Thomas*, for the same Fact, in taking the sloop *Forward*, with her Goods, Capt. Peter Monmouth, Commander.

On the Bill of Indictment against *John Rife*, *Matthew King*, *David Perry*, *Henry Perry*, *James Robert alias Ratle*, *James Muller* alias *M. M.*, *Thomas Price*, *John Lopez*, *Zachariah Long*, and *James W. H.*, for the same Fact, in taking Capt. Ratle.

And on the Bill of Indictment against *William Morrison*, *William Lewis alias Emy*, *Lancelot Parry*, *Henry Perry*, *John Roberts*, *John Lewis*, *William John alias W. J.*, *Alexander Anand*, *George Rife*, *George Duxin*, and *Thomas Nichols*, for the same Fact.

Then the Court proceeded to the Trial of *Robert Tucker*, *Edward Robinson*, *Ned Patterson*, *William Sear*, and *John Bayly*.

Then the Court adjourn'd till the Bar.

Then the Court adjourn'd till the Bar: Their good Men that were called last, and have been appeared, are those that shall pass between our Sovereign Lord the King and you, upon your Lives and your Deaths; therefore, if you or any of you will challenge them or any of them as they come to the Bar to be sworn, and before they be sworn, you may and you shall be heard.

Then the Petit Jury were sworn, whose Names were as followeth.

Twenty Sillars, Foreman,	Brown's Double,	John Lee,
George Duxin,	High Duxin,	Thomas Ben,
John Rivers,	Thomas Chambers,	John Barrow,
William Barrow,	David Thynfield,	Richard Farwell,

Oyez. Oyez. If any Man can inform the Judge of this Vice-Admiralty for the Vice-Admiralty Jurisdiction of this Province, and the rest of the Commissioners of the Admiralty-Officers, or the Attorney-General of this Island as he taken between our Sovereign Lord the King, and the Prisoners at the Bar, or any of them, of any Treason, Piracy, Murder, or other Felony committed or done by the Prisoners at the Bar, or any of them, let them come forth, and they shall be heard; the Prisoners now stand at the Bar upon their Deliverance.

Then the Prisoners were severally bid to hold up their Hands (which they did.)







ing his Escape; and if we can discover the Offenders, we shall not fail to bring them to exemplary Punishment.

And now, Gentlemen of the Jury, I must remind you of your Duty on this Occasion. You are bound by your Oaths, and are oblig'd to act according to the Dictates of your Conscience, to go according to the Evidence that shall be produced against the Prisoners, without Favour or Affection, Pity or Partiality to any one of them, if they appear to be guilty of those Crimes they are charg'd with. And you are not allowed a Latitude of giving in your Verdict according to Will and Manner.

I am sorry to hear some Expressions drop from private Persons (I hope there is none of them upon the Jury) in favour of the Prisoners, and particularly of Bonnet; that he is a Gentleman, a Man of Honour, a Man of Fortune, and one that has had a liberal Education. Alas, Gentlemen, all these Qualifications are but formal Aggravations of his Crimes. How can a Man be said to be a Man of Honour, that has lost all Sense of Honour and Humanity, that is become an Enemy of Mankind, and given himself up to plunder and deluge his Fellow-Creatures; a common Robber, and a Pirate?

Nay, he was the *Archpirate*, as it is now taken in the worst Sense, as the chief Pirate, and one of the first of those that began to commit these Depredations upon the Sea since the last Peace.

I have an Account in my Hand of above Twenty-eight Vessels taken by him, in Company with Yatch, in the *West India*, since the Fifth Day of April last, and how many before, No-body can tell.

His Efface is still a greater Aggravation of his Offences, because he was under an Temptation of taking up that wicked Course of Life.

His Learning and Education is still a far greater, because that generally raises Men's Manners, and keeps them from becoming savage and brutal; but when these Qualifications are perverted to wicked Purposes, and contrary to those Ends for which God bestows them upon Mankind, they become still more abominable, as we see the present Influence, and more dangerous to the Commonwealth.

Gentlemen, mark at the last Bonnet's Crew, and particularly the Prisoners at the Bar, to wit, *Edward Roberts, Robert Taylor, William Scott, Job Bayley, and Nod Paterson*, are old Offenders, and were with Yatch and Bonnet at the taking of all, or most of these Vessels I have mentioned, and were either with Bonnet or Yatch when they lay off our Bar in May last, and sent up that insidious Message, and sent to the King's officers against Col. Rieu, so that there is hardly any room left for the last Pity or Compassion. Who can think of it, when you see your Fellow-Townsmen, here dead, and others daily bleeding and dying before your Eyes?

But the particular Fact or Act of Piracy for which the Prisoners at the Bar are now to be tried, is set forth in the Indictment; for that they the said *Edward Roberts, Robert Taylor, William Scott, Job Bayley, and Nod Paterson*, the second Day of August, in the fifth Year of his Majesty's Reign, by Force and Arms, upon the Sea, in a certain Place called Cape James with Cape John, in the Latitude of Thirty-two, did piratically and feloniously set upon, board, break and enter a certain Merchant Ship called the *Prudent*, *Peter Monmouth* Commander, putting the said *Monmouth* and others in corporal Fear of their Lives; and that they thereby piratically and feloniously did take and carry from the said *Monmouth* out of the said Ship, Twenty-five Hogsheads and Three Tuns, and Three Barrels of Rum, of the Value of Two Hundred Sixty-three Pounds Six Shillings and Eight Pence, and other the Goods mentioned in the Indictment, of the Value of Five Hundred Pounds.

We shall call the Evidence, and prove the Fact fully and clearly upon them.

Take Notice, Gentlemen, that the boarding, breaking, and entry of one, if the rest were present and consenting, is the boarding, breaking, and entry of all the rest.

We shall prove, that all the Prisoners at the Bar were at the taking of *Monmouth's* Ship, that they all bore Arms, and that they all shared a few Days before they came to Cape Fear; and if so, we doubt not but you'll find them Guilty, and discharge that Duty the Country expects from you.

Mr. *Thomas Heyward*, May I please your Honours, and you Gentlemen of the Jury, The Crime the Prisoners are now charg'd with, a Piracy, which is the worst Sort of Robbery, both in its Nature and its Effects, since it disturbs the Commerce and Friendship between different Nations; and if left unpunished, involves them in War and Blood. What Calamities and Ruin they carry along with them, no Person can be a Stranger to; for that state that bring not forth Criminals to Judgment, when it lies in their Power, and is their Duty to do so, are unwelcome in a great Measure, before God and Man, for all the final Consequences of such Acquiescence, which bring a Scandal on the public Justice, and are often attended with public Calamities.

It is not charitable, Gentlemen, to be supposed that wife or honest Men, (and there is none who would willingly be thought otherwise) who love their Country, and wish its Peace and Prosperity, would be guilty in that kind.

What has been said by the King's Attorney or myself upon this unexpected Occasion, I hope will not be looked upon as intended to influence any of the Jury. I am sure it is far from being so designed; Religion, Conscience, Honour, common Humanity, and all Laws forbid such Methods. There is no doubt but the Judges as well as the Jurymen feel discharge their Duty when they proceed without Favour or Affection, Honour or ill-will, or any partial Bias; whether the Matter be a Friend (two great Enemies to Justice) are to be excluded all Courts of Judicature as too partial.

Every Man ought to be extremely tender of such a Person as he has Reason to believe is innocent; but it should be considered likewise, on the other Side, that he who brings a notorious Pirate or common Malefactor to Justice, contributes to the Safety and Preservation of the Lives of many, both bad and good, of the good, by Means of the Assurance of Protection; and of the bad too, by the Terror of Justice. It was upon this Consideration that the Roman Emperor, in his Edicts, made this Precept of Seneca for the public Good as necessary as any Act of Pity or religious Worship.

Our own Laws demonstrate how much our Legislators, and persons living how highly that great Prince King Henry V. and his Parliament thought England concerned in providing for the Security of Traders, and securing the Seas of Rovers and Free-boaters. Certainly there never was any Age wherein our Ancestors were not extraordinarily zealous in this Affair, looking upon it, as it is and ever will be, the chief Support of Navigation, Trade, Wealth, Strength, Reputation and Glory of the English Nation.

Gentlemen, our Concern, as our Trade is, ought in Reason to be very greater than that of our Fore-father. We want no Men's Arguments, no Motives to rise us up, whether we consider our Interest or Honour. We have not only the sacred Word, but also the glorious Example of the best of Kings, which infinitely manifest to us, that the Good and Safety of the English Nation is the greatest Care of his Life. Let every Man therefore who pretends to any Thing of a true English Spirit, readily and cheerfully follow in good, in great, in excellent an Example, by assisting and contributing to the service of his Power and Capacity as an Officer towards the carrying on his noble and generous Design for the common Good; and particularly at this Time, by doing all he can, to the End that by the Administration of equal Justice, the Dispute of the Seas, on which the Good and Safety of the English Nation, and those Parts of America more especially, entirely depend, may be supported and maintained.

The Civil Law treats the Pirates *Regis Prope*, with whom no Commercium ought to be kept; neither are Oaths or Promises made to them binding. And by the Law-Men the Captors may execute such Heads of Pity immediately, without any Solemnity of Commutation, they may not deprive any Branch of the Law.

I believe, Gentlemen, that no greater Motives can be urged to you upon in your Duty, than to desire you to reflect and consider how long you have been afflicted with Pirates (for the Name of Men they do not deserve), and how many Vessels they have taken and pillaged belonging to this Place, as well as Malcontents of other belonging to divers Parts of his Majesty's Dominions; and how many poor Men in whose Blood they have murther'd their Hands with the greatest Inhumanity imaginable, and how many poor Wives and Orphans they have made, and how many Families they have ruin'd, and how long they have gone on in their abominable Wickedness. Nay, do but consider how those very Issues lately mentioned in this Court, when they first set for Merchants, threatening to deliver our Vessels and Men in case of Refusal, may have these have accepted a sentence from the Government of *North Carolina*, like Dogs to their owners they have returned to their old detestable way of living, and have taken off their Coats Thirteen Vessels belonging to *British Subjects*.

I believe you can't forget how long this Town has labour'd and the Fatigue of watching them, and what Difficulties were lately made with a Design to relieve them, and what Arms and Provisions have been lately made use of and expended for the Escape of Bonnet these Ring-leaders, the Cause of all this, which doubt how successful it is that the Law be strictly executed on them to the Terror of others, and for the Security of our own Lives, which were apparently in Danger of losing in the late Difficulties, when under a Notion of the Honesty of *Cromwell*, they threaten'd to let the Town on Fire about our Bars.

We shall now call our Witnesses, who will relate to you what numerous and horrid Crimes the Prisoners at the Bar have committed in the Persecution of the Fact laid in the Indictment.

Glory. Call *Agustus Bell* the Boatman. Who appeared and was sworn.

Mr. *Heyward*. Do you know the Prisoners at the Bar?

Ag. Bell. I know them all very well.

Mr. *Heyward*. Please to give the Court an Account what Vessels were taken after you came from *North Carolina*.

Ag. Bell. I shall begin before that Time. We came from the Bay of Honduras, and from thence to *Providence*, after which we took several Vessels, and then we came and lay off this Bar, where we took five Vessels.

Judge *Trotter*. Did all the Prisoners come from the Bay of Honduras?

Ag. Bell. All except *Robert Taylor*; he came out of a Ship belonging to *Bermuda*; after that we took a *Brigantine*, out of which we took fourteen Negroes. After we had discharged the *Brigantine*, we set sail and went to *Tyghol-Julet* in *North Carolina*, where the Ship was run ashore and left, which *Tyghol-Julet* could be done. After we had been there some Time, Capt. *Thomson* came aboard, and demanded all our Arms, and took out both Hands and all our Provisions, and all that we had, and left us.

Mr. *Gow*. Were all their Men sent aboard or *Robert Taylor* remaining on board?

Ag. Bell. No, Sir, they were put ashore upon an Island.

J. *Trotter*. How came they on board the *Recapture*?

Ag. Bell. The Boat was sent off to fetch them aboard.

Mr. *Heyward*. How came you to *St. Thomas's* to get a Commission from the *Empire* to go against the *Recapture's* Privateering, and we might go with him or continue there; so we having nothing left, was willing to go with him.

Mr. *Gow*. You say all were on Shore, and all might have gone up into the Country; pray what Commissions were any of you under?

Ag. Bell. Sir, now, when we left *Tyghol-Julet*, it was with a Design to go to *St. Thomas's* for the *Empire's* Commission to go against the *Spaniards*; but the first Vessel we saw gave Chase to, and came up with him.

Ag. Bell. We took some Privateers out of him. After we had discharged her, we saw another, which we chased and took.

Mr. *Gow*. Were all these Men aboard and in Arms at the same time?

Ag. Bell. Yes, Sir, all were in Arms. So after we had taken five Privateers out of her, then we discharged her. Next Day we saw two Ships bound to *Bermuda*, which we took. The next Day we gave Chase to another, and about Seven or Eight of the *Creek* we came up with; so that they had their Arms always in Order?

Ag. Bell. I know nothing to the contrary.

J. *Trotter*. Was *Taylor* there in particular?

Ag. Bell.



*J. Pail.* He was, to be sure.  
*J. Trutt.* Go on.  
*J. Pail.* Then we gave Chase to a Ship bound and we came up with her, in which were four Negroes. We left three Negroes on board, and two White Men, and first three Hands from the *Revenge*: But we seeing two Sloops more we flood after them, and the other turned Tail, and we move fast towards it: We came up with the Sloop, out of which we took thirty Barrels of Beef, some Butter, and other Provisions.

*Mr. Hewarth.* What did you remain in the room of their Goods?  
*J. Pail.* Some *Abdullah* that we had on board Major *Bassett's* Sloop, after we had discharged these Sloops. Next Day we took a ship and a Schooner, which Major *Bassett* took with him.

*Mr. Hewarth.* Did you take any Pander out of this?

*J. Pail.* The chief was *Providence*. Then we failed in Company; and the next Day we came to the Cape of Virginia, where we met with two vessels bound for *Glorious* in *Sweden*, out of which we took Provision all from *Talapa*.

And after we had been at Anchor some Time, we saw a Sloop, which was Capt. *Mansuering*: We lay down out Dory, and took some Hands on board; and in a little Time after they came on board the *Revenge* with Captain *Mansuering*.

*Mr. Geo.* Were all the Prisoners on board *Mansuering's* Sloop; or had they all their Arms ready when *Mansuering* was taken?

*J. Pail.* I cannot say that they were all on board; but they had all their Arms ready.

*J. Trutt.* Did they all appear forward and active? Did none of them show themselves disinclined or unwilling to do it that Time?

*J. Pail.* No, I don't know but one was at forward and as willing to do as the others; all of them had their Arms ready.

*J. Trutt.* Well, how did you proceed after Captain *Mansuering* was taken?

*J. Pail.* Next Day we hailed the Schooner alongside of Captain *Mansuering's* Sloop, and hoisted out several Hogheads of Molasses, and put on board the Schooner.

*Mr. Hewarth.* What became of the Schooner afterwards?

*J. Pail.* After we put *Amos's* Wife on board, and Captain *Reed's* Son, we sent them on shore.

*Mr. Geo.* How long was Captain *Mansuering* a Prisoner?

*J. Pail.* About ten Weeks.

*Mr. Geo.* Was not there more Goods taken out of *Mansuering's* Sloop? What became of them? Did you not share them?

*J. Pail.* Yes, we shared a little before we came to Cape Fear.

*Mr. Geo.* Did all the Prisoners at the Bar receive their Shares?

*J. Pail.* Yes, Sir; I know nothing to the contrary.

*J. Trutt.* They did not refuse their Shares, none of them, did they?

*J. Pail.* No.

*Mr. Geo.* Have any of you any Questions to ask the King's Evidence?

*John Taylor.* Have you any?

*Prisoner.* No, Sir.

*Clark.* Edward *Reidings*, have you?

*Prisoner.* No, Sir.

*Mr. Hewarth.* May I please your Honours, we will proceed to call another Evidence.

*Clark.* Call Capt. *Phonar Reed*. Who appeared, and was sworn.

*Mr. Hewarth.* Capt. *Reed*, please to look upon the Prisoners at the Bar, if you know them.

*Capt. Reed.* I know them all very well.

*Mr. Hewarth.* Please to give an Account to the Court how you were taken, and also of the taking of Capt. *Mansuering*.

*Capt. Reed.* The Sloop *Revenge* was at an Anchor, and the Schooner alongside of her. I was then a Prisoner on board the Sloop *Revenge*.

In the Evening we saw a Sloop coming into the Bay, and Major *Bassett* sent off five Hands with the Dory, and about an Hour after they came on board the *Revenge*, and brought Capt. *Mansuering*. After they brought him on board, Major *Bassett* demanded his Papers, and he gave them to him. He asked him from whence he came? He answered, from *Angora*, and he said for *Reven*. He asked him what he had on board? He told him: But being Night, he said but little more to him: Next Morning they brought the Sloop and hoisted alongside the Schooner; and I saw them hoist out several Hogheads out of the Sloop and put on board the Schooner.

And I heard Major *Bassett* say the next Day, that there were twenty-one Hogheads; and that he had ordered Pitch and Tar to be put on board the Sloop, and at the Evening they took the Forefall and Mainfall of the Schooner, and sailed for Cape Fear.

*J. Trutt.* You look upon all those Men as belonging to Major *Bassett*, and they were all active in the taking of *Mansuering*?

*Capt. Reed.* I did not see but one added as the other did.

*J. Trutt.* You did not look upon them to be Prisoners, like you and your Men?—Capt. *Reed*. No, Sir.

*J. Trutt.* Do you know any thing of their *Share*? Did they all take their Shares?

*Capt. Reed.* I know nothing of that; for we were all in the Round-Head, and were not admitted among them at that Time.

*Mr. Geo.* Did you see them have their Shares each of them?

*Capt. Reed.* I will not say I saw them have every Man his particular Share; but they were all together when they did share.

*Clark.* Would any of you ask the King's Evidence any Question?

*Prisoner.* We desire nothing but that he would speak the Truth.

*Mr. Hewarth.* May I please your Honours, we shall proceed to call another Evidence, which is Capt. *Peter Mansuering*.

*Clark.* Call Capt. *Peter Mansuering*. Who appeared, and was sworn.

*Mr. Hewarth.* Capt. *Mansuering*, do you know the Prisoners at the Bar?

*Capt. Mansuering.* I know them very well.

*Mr. Hewarth.* Please to give the Court an Account of your being taken by them.

*Capt. Mansuering.* When they came on board as we were at an Anchor, About Eight or Nine of the Clock in the Evening we saw the *Canoe* coming. I ordered my Men to take them. He asked from whence they came, and what Ships they were? They answered, Capt. *Thomas*

*Richard's* from *St. Thomas's*, and Capt. *Reed* from *Philadelphia*. So we were glad to hear of it; so hoped all was well. But as soon as they came up the Shoards, they clapped all Hands to their Cutlasses. Then I saw we were taken. And I said, Gentlemen, I hope, as you are Englishmen, you'll be merciful, for you see we have nothing to defend ourselves. They told us they would if we were Civil. So I was ordered on board the *Revenge* with two of their Men. So when I came on board, Major *Bassett* desired me to come under the Aftersail. He demanded my Papers. I gave them to him. So he told me I must be as well as I could. Next Day 31 being Robert *Tucker* came to me, and asked me what I had on board? and I told him, if I did not tell the Truth, it should be the worse for me. I told him I had some Molasses, Sugar, and Rum. Then he asked me concerning my Passengers, what Money they had? I told him I never examined Passengers what Money they had, so then Major *Bassett* ordered them to come and lie alongside the schooner; but what was done first then on board my Sloop I cannot tell. But then they took out the Molasses and Rum, and put on board the schooner.

*Mr. Geo.* How did they behave themselves with respect to yourself afterwards?

*Capt. Mansuering.* They were civil to me, very civil: But they were all very brisk and merry, and had all Things plentiful, and was making Punch and drinking.

*Clark.* Would any of you the Prisoners ask the King's Evidence any Questions?

*They all say Englishmen.*

*Mr. Hewarth.* Please your Honours, we will proceed to call another Evidence.

*Clark.* Call James *Killing*, Capt. *Mansuering's* Mate. Who appeared, and was sworn.

*Mr. Hewarth.* Do you know the Prisoners at the Bar?

*James Killing.* Yes, Sir, I know them all very well.

*Mr. Hewarth.* Please to give the Court an Account of the taking of Captain *Mansuering's* Sloop.

*James Killing.* The Thirty first of July, between Nine and Ten of the Clock, it was running along, Tule at Lbb, we came to an Anchor about fourteen or fifteen of Water near Cape Fear. In about Half an Hour's Time I perceived something like a Canoe: So they came nearer. I said, they had a Canoe coming; I will they be Friends. I hailed them, and asked them whence they came? They told, Capt. *Thomas Richard's* from *St. Thomas's*, and Capt. *Thomas Reed* from *Philadelphia*. They asked me from whence we came? I told them from *Angora*. They said we were welcome. I said they were welcome, as far as I knew. So I ordered the Men to hand down a Rope to them. So soon as they came on board they clapped their Hands to their Cutlasses; and I said we are taken. So they came and none for a Light. I ordered our People to get a Light as soon as possible. So they ordered our Captain immediately to go on board the *Revenge*, and accordingly was left with two of their own Hands; and I saw him to move that Night. So when they came into the Cabin, the first Thing they began with was the Fire-Engines, which they set down with their Cutlasses. They asked me if I would not come and eat along with them? I told them I had but little stomach to eat. They asked me why I look'd so melancholy? I told them I look'd as well as I could. They asked me what Liquor I had on board? I told them some Rum and Sugar. So they made Bowls of Punch, and went to drinking of the *Protector's* Health, and hoped to see him King of the *English Nation*: Then gave a Song or two. Next Morning they ordered more Hands on board the Sloop, and so came and lay along side the Schooner; after that they hoisted out from Hogheads of Molasses, and several Hogheads of Rum, and put on board the Schooner, and took several Barrels of Pitch and Tar and put on board the Sloop; and I happened to go down into the Cabin, and Robert *Tucker* came to me, and told me I had no business there, but was better go forward and work among the rest of the Men. So I went forward, and asked what that was? They told me that was their Father. In the after-part of the Day two of *Reed's* Men were ordered to the Mast to be whipt, and I was threatened if I did not confess all I knew. Then Robert *Tucker* came to me, and told me I must go along with them. I told him I was not fit for their Turn, as other were fit. Inclinations that way. After that Major *Bassett* himself came to me, and told me I must either go on a Mission Shore, or go along with them, for he desired to take the Sloop along with him. This Evening between Eight and Nine we were ordered to fix Sail, but whether I knew not. So we failed out that Night, and I being weary with the Fatigue, went to Sleep; and whether it was with a Design or not I cannot tell, but we fell to Leeward of the *Revenge*; and in the Morning Major *Bassett* took the Speaking Truncheon, and told us if we did not keep closer, he would fire us upon us, and sink us. So then we proceeded on our Voyage till we came to Cape Fear.

*J. Trutt.* Have you done with your Evidence?

*J. Killing.* Yes.

*Clark.* Would any of you Prisoners ask the King's Evidence any Questions?

*No Question asked by the Prisoners.*

*J. Trutt.* You the Prisoners at the Bar stand charged with *Felony* and *Pray* committed on a certain Ship belonging to Capt. *Peter Mansuering*. The Evidence have proved it home upon you, the *Bottwin* tells what did Offenders you were, and that you were with *Thelick* off this Bar, and that you were at the taking several Vessels after you left *Angora* last; and all the Evidence prove the same to you, so that it appears all of you work up with this wicked Course of Life out of Chance! Now what Evidence have you to come in on your Behalf? or what have you to say in your Defence? Now is your Time to speak, when you busy to say?

*Clark.* Robert *Tucker*, what have you to say?

*Robert Tucker.* After Capt. *Thelick* had taken what he had and left us, Major *Bassett* came and told us that he was going to St. Thomas's for the *Engender's* Commission, if there was any to be had.

*J. Trutt.* Pray, if you were bound to St. Thomas's, what did you do at the Cape of Virginia? What business had you there?

*Robert Tucker.* We had but little Provision on board.

*J. Trutt.* So you went and met with some by the way.

*Clark.*



*Clerk.* Edward Reliance, what have you to say?  
*Edward Reliance.* When Capt. Thatch left us it was on a Maroon Island, and Major Bonnet came and told me he was going to St. Thomas's, and we might go with him.

*J. Trutt.* Was not you one of them that was off this Bar with Thatch?  
*Edw. Reliance.* Yes.

*J. Trutt.* Why did you not come on shore then?  
*Edw. Reliance.* I would have come on shore, but Capt. Thatch would not give me leave. I was with Mr. Fragg, and told him I would go on shore if I had liberty.

*J. Trutt.* Was you one of the five that came up to Town?

*Edw. Reliance.* No.

*Clerk.* No I perceive, what have you to say in Defence of yourself?  
*N. Paturife.* Thatch came on board and carried away fourteen of our best Hands, and marooned twenty-five of us on an Island, and Major Bonnet came and told us he was minded to go to St. Thomas's, and if there were any Commissioners from the Emperor, to get one, and a privy-counsellor against the Spaniards, so I was willing to go with him, and when I was on board, he forced me to do what he pleased, for it was against my Will.

*J. Trutt.* Did not Thatch carry away your Money and what you had besides of Goods?—*N. Paturife.* Yes.

*Ans. Gen.* Was you not all absent when you receiv'd the Act of Grace?

*N. Paturife.* Yes, Sir.

*Ans. Gen.* Why had you not been contented about? Why did you join with Bonnet? Or who sent you to it?

*N. Paturife.* But, Sir, it was in a strange Land, and I had no Money, nor nothing left, and I was willing to do something to live; but it was against my Will to go a praying.

*J. Trutt.* If you were sent first and took only Privies, pray have did you come to them, for much Money and Goods afterwards? You say Thatch carried away what you had before.

*N. Paturife.* I could not hinder the self from doing what they pleased; but it was contrary to my Inclination.

*Clerk.* If you can't, what have you to say?

*J. Trutt.* When we left Tappah-Jah, it was to go to St. Thomas's, and I talked with them there was Provision on board. They told me there was enough, so I was to have ten or eleven Hands.

*J. Trutt.* So you took it where you could find it, because you had it sent of your own? But pray what did you with so much Molasses, which was neither for eat or drink?

*J. Trutt.* What I did, was to keep me from perishing; but it was not in my Power to hinder the self.

*Clerk.* If so only, what have you to say?

*J. Trutt.* When Capt. Thatch was or Major Bonnet was ready to fall, I went aboard, and I shot whether they had Provision on board? They told me they had. But on a few Days it was all spent, and then I was forced to do as the rest did.

*J. Trutt.* But why did you not go to Capt. Mennering and his Men did? You say they did not ask you did.

*J. Trutt.* Capt. Mennering was not taken then.

*J. Trutt.* But how came you to join with them afterwards? And pray what made you fight against Col. Reim, when he came out with lawful Authority to you?

*J. Trutt.* They thought it had been a Pirate.

*J. Trutt.* And so one of you might fight with another. But how could you think it was a Pirate, when he had King George's Colours?

*Ans. Gen.* May it please your Honour, and your Gentleness of the Jury, the Evidence have plainly prov'd, that all the Prisoners at the Bar were at the taking of Capt. Mennering's Ship, that they all consented to, and all were alive in it, and all receiv'd their Shares; so that I think it hath been plainly prov'd none upon them.

*J. Trutt.* Gentleness of the Jury, the Prisoners at the Bar all stand indicted for Felony and Piracy committed on a Ship belonging to Capt. Peter Mennering, it is expressed in the Indictment. The first words tell us what did Offenders they were before they went to Tappah-Jah, that they were at the taking of so be's than thirteen Vessels; and that particular they were at the taking of Capt. Mennering. Then comes Capt. Reed, and he was taken before Capt. Mennering, and was then a Prisoner on board the Pirate-Ship, and he tells you, they all appear'd in Arms, and that he did not look upon them as Prisoners, or under Constraint, but of the same Company; and he tells you he saw them take Capt. Mennering, and that he saw them take out the Goods, as is mentioned in the Indictment, out of Mennering's Ship. Then comes Capt. Mennering himself, and he says all the Goods mentioned in the Indictment were taken out, and that they had their Goods among themselves. Then comes Kelling the Mate, and he proves the same, and particularly Thatch, he was so forward, that he told them, if they did not sell the Truck, it should be the worse for them: And Paturife was so active, that he was forcing them brought to the Gun to make them confess, and that all the rest had their Arms ready, and all had their Shares: So that I think the Evidence have fully prov'd the Indictment upon them; and that it is very plain and home against them. They plead indeed, that they were forced and constrain'd to go, but give no Proof of it, and therefore who can distrust any of them appears to be under, I shall leave to your Considerations. This I think the Evidence is very plain and clear, yet I shall not pretend to direct your Judgments, I shall only remark to you what the Wife Man faith, that he did justify the self, as well as he that condemneth the self, even both are an Abominable to the Lord.

Then an Officer was sworn to keep the Jury.

And about nine Hours after the Jury returned, and gave in their Verdict.

*Clerk.* Gentlemen, answer to your Names. Timothy Belding.

Timothy Belding. Here, Sir.

*Clerk.* Are you all agreed of your Verdict?—*Jury.* Yes.

*Clerk.* Who shall tell you for us?—*Jury.* The Foreman.

*Clerk.* Robert Tucker, hold up thy Hand. (Which he did.) How say you? Is he guilty of the Piracy whereof he stands indicted, or not guilty?

*Foreman.* Guilty.

*Clerk.* What Goods and Chattels, &c.

*Foreman.* None that we know of.

*Clerk.* Then hearken to your Verdict, as the Court hath recorded it. You say that Peter Tucker is guilty. The Jury returned he stands indicted, and that he had no Goods or Chattels, &c.

*Jury.* Yes.

And the Jury also told Edward Reliance, Noel Paturife, William Smith, and John Belding guilty.

*Clerk.* Matthew, look to your Prisoners.

THEN the Court proceeded to the Trial of John William Smith, Thomas Green, Jo. a Tinner, William Lurphy, William Lewis, John Smith, Samuel Hill, John Green, and John Lewis, for the same last Fact, as particularly taking the said Ship Francis, Capt. Peter Adams, &c.

*Clerk.* John William Smith, Thomas Green, &c. to the Bar.

I sent the Jury they were called over.

*Clerk.* You the Prisoners at the Bar: These good Men that were called in, and have here appear'd, are such that shall guard between our honours Lord the King and you, upon your Lives and your Deaths, therefore if you are of you will challenge them or any of them as they come to the look to be sworn, and before they be sworn, you say, and you shall be heard.

Then the Jury were sworn, whose Names are as followeth.

Sworn Prisoners, Foremen. *John Martin.* *Charles Morda.*

*John Belding.* *Thomas Fawcett.* *John Grinstead.*

*George Lurphy.* *Henry Green.* *Benjamin de la.*

*Robert Morda.* *John Taylor.* *John Morda.*

Then the usual Proclamation for Information was made. And the Prisoners being bid to hold up their Hands, the Clerk charged the Jury with them thus.

*Clerk.* You Gentlemen of the Jury that are sworn, look upon the Prisoners, and hearken to their Charge.

Then the Indictment was read as followeth.

THE Takers for our Sovereign Lord the King, do upon their Oaths swear, that, To the Daniel Hinson, late of Jamaica, Merchant; John William Smith, late of Charles Town, Merchant; Thomas Green, late of Jamaica, Merchant; John Lewis, late of Jamaica, Merchant; William Lurphy, late of Jamaica, Merchant; William Lewis, late of Jamaica, Merchant; Samuel Hill, late of Charles Town, Merchant; John Lewis, late of North Carolina, Merchant; and William Henry, late of Jamaica, Merchant; the said Day of August, &c. as before.

*Clerk.* Upon this Indictment they have been arraigned, &c. as before.

The Witnesses against the Prisoners were sworn. First the said Capt. Thomas Reed, Capt. Peter Mennering, and Mr. James Hill up in Court, who all gave the same Evidence against them as against the others that was a trial before.

*Clerk.* Will any of your Prisoners ask the King's Evidence any Questions?

*Ans. Gen.* No. As first asked by the Prisoners.

*J. Trutt.* You the Prisoners at the Bar, you have heard how fully the Witnesses have charged the Facts upon you. Now what you have to say in your Defence, I shall be ready to hear you.

*Clerk.* John William Smith, if you have any thing to say, you have Liberty to speak.

*John William Smith.* When we left Tappah-Jah, I knew nothing but that we were going to St. Thomas's; but after we were out, they hoisted the bloody Flag; but I did not believe we were going to St. Thomas's.

*Ans. Gen.* Did you hear Arms on board of Major Bonnet?

*Smith.* Yes, Sir.

*Ans. Gen.* Was you at the taking all those Vessels?

*Smith.* Yes, Sir; but it was against my Will.

*Clerk.* John Green, what have you to say?

*Green.* As for what I did on board Captain Thatch, I was forced; and when I came to North Carolina, I would as there was on board, but Major Bonnet took us the Act of Grace; and when I came to my own house, it was to get my Bread, in hope to have went where I might have had Balaish; for when we left Tappah-Jah, I had not sign'd the Articles.

*Ans. Gen.* You gave the Captain your Word that you would.

*Green.* When I was left in the ship, I endeavour'd to make my Escape with the Ship.

*J. Trutt.* So, I find you wanted a Vessel of your own.

*Green.* No, but to have got out from them: But I could not.

*Ans. Gen.* That confirms what the King's Evidence proves against them.

*Clerk.* John Thomas, what have you to say?

*Thomas.* We had nothing left us, and we were on a Maroon Island, and Major Bonnet he came and told me I might go with him, but it was against my Will to bear Arms.

*J. Trutt.* Was not you off this Bar?

*Thomas.* Yes, but I was forced to it.

*Mr. Hopewell.* And was you not at the taking of Capt. Mennering's Ship?—*Thomas.* Yes.

*Mr. Hopewell.* And had you not your Share?—*Thomas.* Yes, Sir.

*J. Trutt.* And yet you say you was not willing to go a praying.

*Clerk.* William Morda, what have you to say?

*Morda.* Capt. Thatch had run the Ship ashore, and Major Bonnet went up to the Governor for the Act of Grace, and when he returned he told me I might go to St. Thomas's; and after that he said Prisoners would fall short, and he should go on the Coast of Virginia to see for force.

*J. Trutt.* But was that your Manner of going for a Commission, to take thirteen Vessels by the Way? But was you not at the taking of Mennering's Ship? And had you not your Share?

*Clerk.* William Lewis, what have you to say?

*Ans.* After we came to North Carolina, and Capt. Thatch had left the Ship, Major Bonnet told me he would give me my Passage to St. Thomas's; and he would endeavour to get a Ship there, and I might go with him a privy-counsellor: But when he came to Sea, I found how it was, and I would not consent for a long Time, but at last they forced me to it.



**J. Trutt.** But you had your Share as well as the rest?  
**Ans.** They forced me to do what I did.  
**Clark.** Samuel Smith, what have you to say?  
**Ans.** As we came from *Yapfall-Iah*, we met with the Sloop *Ranger*, they boarded us, and took us, and I was a Prisoner three Weeks before I confessed; and then they order'd me to the Gun before I could consent.  
**J. Trutt.** But you had your Share of Capt. *Memmaring's* Sloop?  
**Ans.** His sole Inclination was not that Way.  
**Clark.** William Hunt, what have you to say?  
**Ans.** I oblig'd to go to St. Thomas's with Major *Bassett*, for he told me he was bound thither, in I was willing to go with him.  
**Clark.** John Lewis, what have you to say?—*He makes no Defence.*  
**Ans. Geo. May** it please your Honours, the Boat forain and all the Evidence prove the Indulgence upon each of the Officers, that they were all the taking of Capt. *Memmaring's* Sloop, and all had their shares.  
**J. Trutt.** Gentlemen of the Jury, I think I may try but stale on this Matter: They all confess the Fact of which they stand indicted. Some of them were old Officers, and all of them were proved to be at the taking of Capt. *Memmaring's* Sloop, and all took their Shares: In that thing the Fact is very fully and clearly proved upon them. But I shall now that to your Consideration, and I pray God direct you to give a true Verdict.  
Then an Officer was sworn to keep the Jury,  
Who after they had consider'd of their Verdict, return'd and found *the William Smith, Thomas Cowan, John Thomas, William Morris, William Livers alias Rich, Samuel Smith, William Hunt, and John Lewis, guilty.*

Then the Court adjourn'd to Friday Morning.  
Friday, October the 23<sup>rd</sup>.  
THE Court proceeded to assign *William Eddy alias Nedy, Alexander Anand, George Rife, George Dunlop, Thomas Nichols, John Ridge, Matthew King, David Perry, and Henry Forgie*, upon the following Indictment, for piratically taking Capt. *Memmaring's*.

The Jurors for our Sovereign Lord the King do upon their Oaths protest, That William Eddy alias Nedy, late of Aberdeen, Mariner; Alexander Anand, late of Jamaica, Mariner; George Rife, late of Glasgow, Mariner; George Dunlop, late of Glasgow, Mariner; Thomas Nichols, late of London, Mariner; John Ridge, late of London, Mariner; Matthew King, late of Jamaica, Mariner; Daniel Perry, late of Gibraltar, Mariner; and Henry Forgie, Mariner, late of Bristol; the second Day of April, in the fifth Year of the Reign of our Sovereign Lord King George, in the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, &c. as follows.

Who all pleaded *Not Guilty*.  
Then the Court proceeded on their Trial.  
And the Jury were sworn, whose names are as follows.  
*Samuel Bellamy, Foreman, &c. as before.*  
The same William against them, were.  
*James Rife, the Boatswain; Capt. Thomas Reed; Capt. Peter Memmaring, and Mr. James Killing, his Mate;*  
Who all gave the same Evidence against their Prisoners as against the above, excepting *Thomas Nichols*.  
Capt. *John Savelson*, one of the Captains, being sworn, declared, that *George Rife*, the Gunner of the Pirated Sloop, was for blowing up the said Sloop, and that he acknowledg'd he was to have for lot to the Trial, and that he would have done so.

As to *Thomas Nichols*:  
*James Rife* declared, that *Nichols*, after he came to Sea, was very much discontented; but Major *Bassett* said he would force him to go. However, he would not join with the rest of the Men, but always separated himself from the Company.  
*Capt. Reed* said, that *Nichols* behaved himself different from the rest, and did not join with them.  
*Capt. Memmaring* said, that *Nichols*, when he was aboard his Sloop *Reed*, he did not like to near with him in a little time, for he hoped to get out of them, and looked very melancholy, and never joind with the rest in those Cabals when they were drinking, and when Major *Bassett* first sent him, he refused to go, and said, he would do before he would join.  
*Clark* Will any of you ask the King's Evidence any Questions?  
*Nichols* Mr. Killing, did you never hear me say I would leave that Coast of Life?

**J. Trutt.** Did you hear him say so?  
*Killing.* When he came on board he told me, he would give the whole Board, if he had it, to be free from them: And when he was on board and Major *Bassett* sent for him, he refused to go on board the *Ranger*, till he was to fetch him by force, and then he told me he would not fight if he did not like to live for it: And he was not with them when they threatened, and he was not to be heard of as long with them, and he never was at their Councils as the rest were.  
**J. Trutt.** He seems to be under a Constraint indeed, and therefore must be taken into Consideration.  
*Clark* Will any of your Prisoners ask any more Questions?—None asked.  
**J. Trutt.** If any of them have any thing to say, they now have three Liberty to speak.  
*Clark.* *William Eddy alias Nedy*, what have you to say?  
*Nedy.* I never was on board Capt. *Memmaring's* sloop, nor had no hand in it.

**J. Trutt.** You was one of *Samuel's* Crew.—*Nedy.* I never sail'd in it.  
**J. Trutt.** That is no Excuse, it's not fact or it is a mistake: I told you so, would you, but that that had made to send them, was a great a hand in the Fact as the other, for Men would not be a two a time, if they had no more help, so that the whole Crew are equally concern'd as such a Time.

**Clark.** *Alexander Anand*, what have you to say?  
*Anand.* When we were at *Tajul-Iah*, Major *Bassett* told me he would go and get a Clearance for the Sloop. I was oblig'd to go to St. Thomas's for a Commission, and I might as well have: I did suspected nothing when we were out to Sea, and then I was oblig'd to go.  
**J. Trutt.** But why did you not declare against it then, and is not join with them?  
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*Anand.* I was but one Man, and a Stranger, and I was afraid I should have lost my Life.  
*Clark.* *George Rife*, what have you to say?  
*Rife.* I belonged to the Sloop, and we met with Major *Bassett* and was taken by him: Next Day two of the Men told me I must go with them. I answer'd them, No; I did not design to leave the Sloop. But they told me I must; and they told me if I would but consent I should have any thing. And a little after Capt. *Memmaring* was taken.

**J. Trutt.** And you had your Share of *Memmaring's* Goods?  
*Rife.* Yes.  
**J. Trutt.** So, that you were unwilling at first, you was willing afterwards, and also fought Col. *Riatt* when he came out against us.  
*Rife.* They told me it was Capt. *Thom's*, for my part I did not know who it was.  
**J. Trutt.** But pray what Authority had you to fight any body?  
*Clark.* *George Dunlop*, who may speak when you have to say.

*Dunlop.* After we were taken at the Capes of Major *Bassett* sent to me and told me I must go along with them. But I told him I could not let him be the Victim. He said me I must.

**J. Trutt.** But why did you join with them afterwards in taking your Share of *Memmaring's* Goods? and why did you fight Col. *Riatt* and his Men? If you had not fought, you might have lost the Lives of twelve or fourteen Men.

*Dunlop.* Major *Bassett* declared, if any one refused to fight he would blow him out.  
*Thomas Nichols* made his Defence before.  
*Clark.* *John Ridge*, what have you to say?  
*Ridge.* After we came to *Tajul-Iah*, and the Ship was lost, Major *Bassett* came on board, and told us that he would go and fetch the *Ad of Grace*, and get a Clearance for the Sloop, and go to St. Thomas's for a Commission; and he expell'd we would go with him; so when he was gone up to the Country we ran the Sloop; in the Quarter Master, the Boatswain, and he agreed together, but for my part I knew nothing what it was a Design was; and for the first I will say how they took: But it was my Reluctation to go away by the first Opportunity.

*Clark.* *Matthew King*, what have you to say?  
*King.* When we were at *Tajul-Iah*, Captain *Thom* disembarked us on the island, and left us, and Major *Bassett* told us he would go to St. Thomas's; but the first Prize we met with us took, having but little Provision on board.  
**J. Trutt.** How could you think of going to St. Thomas's without Provisions?

*Ans. Geo.* But the Boatswain says there were Provisions on board; several Barrels of Flour, and several Barrels of Beef and Pork.  
**J. Trutt.** What need had you then to go a pirating?  
*King.* I did not know it till we were out.

**J. Trutt.** *Bassett* had not above five Hands, and there were of you twenty-five, who would he be all commanded by them? You had no need to join to them.

*Clark.* *David Perry*, what have you to say?  
*Perry.* When Capt. *Thom's* left us, it was on a Murren Island, and Major *Bassett* came and told us he had the *Ad of Grace*, and so we might go with him.

**J. Trutt.** Is it that you have to say? You know *Thom's* and *Bassett* were both Pirates, and why would you go with them again?

*Clark.* *Henry Forgie*, what have you to say?  
*Forgie.* Major *Bassett* order'd about thirty Hands to be ready, and in a little time we were order'd on board; and when we were about a hundred Leagues from Land, he said if there were any that would go a Murrenning; and I believe there were two or three that persuaded him they would, tho' I did not.

**J. Trutt.** But had you no Opportunity to come from them?

*Forgie.* If we had known anything of the *Ad of Grace* when we were off this Bar, we had come ashore. I went to make my escape, and leapt into the Water, and had like to have been drown'd.

**J. Trutt.** How many Vessels have you been at the taking and burning of do you think?—*Forgie.* I believe about three.

*Mr. Hapwood.* He was with them at the Bay of Honduras, and all along.

*Forgie.* But I never gave my Consent, for Capt. *Thom's* never asked any of us.

**J. Trutt.** Would any of the Prisoners say any more? If they will I am ready to hear them.

*Ans. Geo.* May it please your Honours, and your Gentlemen of the Jury, these three, *Nichols, Dunlop, and Ridge*, seem to make some Defence. As for *Nichols*, he was with them when *Memmaring* was taken; and the Mate *Bassett*, that he separated himself from the rest of the Cabal; and when that Board, he told them they might do as they pleas'd with his share, for he hoped he should not be with them long: In that it appears that he separated himself from the rest of the Company from the very first: If he had thought he should be to be confider'd. And as for *Dunlop*, he looked upon himself as a Prisoner at first; but the Boatswain order'd says he had his share. And as for *Ridge*, he said, that he refused to make his Escape. For all the rest, they seem to be equally guilty.

**J. Trutt.** Gentlemen of the Jury, the Prisoners at the Bar stand indicted for *Felony and Piracy*, committed on a Sloop belonging to Cape, *Poor Memmaring's* Commander, and was only did they break and board the said *Memmaring's* Sloop, which was an *Ad of Piracy*, but it hath been proved upon them, that they were at the taking of thirteen Vessels, as you see in the *Tajul-Iah*. And it is as true that they have something to say in their Defence, *Nichols, Ridge, and Dunlop.* And *David, Rife* say he had his share, in the rest say: *Capt. Reed* board upon him as a Prisoner, so *Capt. Memmaring* did not. As for *Ridge*, he was at *North Carolina*, and took up with *Bassett* to go to St. Thomas's, and it is possible for a Man to be driven to, for *Pull* believe that they were bound to St. Thomas's, and *Killing* the Mate declared, that he told him he would free himself from that Coast of Life the first Opportunity: So I shall leave it to your Consideration. But *Samuel Nedy*, I think it is plain he was under Constraint and Force, for *Pull* believe declares that he would have nothing to do with them, and he did hope that he should not be long with them. *Capt. Memmaring*, and *Mr. Killing* his Mate, all confirm the same. And when he was sent for to come on board *Bassett*,  
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to go out to fight Colonel Rickett, he refused to go; and when he was told of a report abroad, he said he would die before he would fight; and accordingly went into the Hold, and did not fight Colonel Rickett. So that when we the Court of the Evidence, I think it is very clear that he was not a Confederate and Foe. As to the rest, I think the Proof is full against him; but I shall leave them to your Consideration. You know that as the Indictment will not be considered, so the Guilty ought not to be acquitted. Remember to have the List of their Prisoners in your Hands; and I give you a short Verdict.

Then an Officer was sworn to keep the Jury.  
When after three had considered of their Verdict, returned, and found *James Rickett* alias *Nelly*, *Alexander Adams*, *George Rife*, *George Dunlop*, *John Rife*, *Matthew King*, *Daniel Perry*, and *Henry Fagin*, Guilty; and *Thomas Nelson*, Not Guilty.

Then the Court proceeded to arraign *James Rickett* alias *Rattle*, *James Mellet* alias *Adieu*, *Thomas Prior*, *James Wilson*, *John Lopez*, and *Zachariah Long*, upon the following Indictment, for maliciously taking *Capt. Memorizing*.

"The Jurors for our Sovereign Lord the King do upon these Oath profess, that *James Rickett* alias *Rattle*, late of London, Merchant; *James Mellet* alias *Adieu*, late of London, Merchant; *Thomas Prior*, late of Bristol, Merchant; *James Wilson*, late of Dublin, Merchant; *John Lopez*, late of Jersey, Merchant; and *Zachariah Long*, late of the Province of Maryland, Merchant, the Second Day of August, in the Fifth Year of the Reign of our Sovereign Lord George, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c."

To which Indictment *James Rickett* alias *Rattle*, *James Mellet* alias *Adieu*, *Thomas Prior*, *John Lopez*, and *Zachariah Long*, pleaded Not Guilty. Then the Court proceeded upon the Trial of those that pleaded Not Guilty.

The Jurors were sworn, whose Names are as followeth:  
*Samuel Preston*, Foreman. *Thomas Fairchild*. *Charles Marsh*.  
*John Hoag*. *Thomas Fairchild*. *John Grimaldi*.  
*Georj Camplin*. *Henry Goss*. *Benjamin Griffin*.  
*Lewis Kenton-Jones*. *John Jeffery*. *John May*.

The *Prosecution* against the Prisoners were the above-named. *Ignatius Pelt*, the Boatman, *Capt. Thomas Rook*, *Capt. Peter Memorizing*, and *Mr. James Küling* his Slave.  
When all gave the same Evidence against their Prisoners, as against the others that were tried before.

*Clerk*. You, the Prisoners at the Bar, have heard what the King's Evidence have been against you. Now is your time to make your Defence.

*Clerk*. *James Rickett*, what have you to say?  
*Rickett*. I was on board the *Revenge*, and then I was sent on board of *Capt. Rook's* Ship, and was there four Days; and then was sent on board the *Revenge* again: For I was short to run away, if I had an Opportunity.

*Clerk*. *James Mellet*, what have you to say?  
*Mellet*. When we left *Typhoon* Islet, it was to go to St. Thomas's; so *Major Bonnet* told me: And I being on a Maroon Shore, I was willing to go with him.

*Clerk*. *Thomas Prior*, what have you to say?  
*Prior*. *Capt. Thomas* left us on a Maroon Shore, and had nothing left; and *Major Bonnet* told me I might go with him to St. Thomas's; but I refused not to go a prating.

*J. Trist*. Did you not your Share?  
*Prior*. I was forced to do as I did when I was on board.

*Clerk*. *John Lopez*, what have you to say?  
*Lopez*. I was at the Bay of Honduras, and was taken by *Them* and carried to *Typhoon* Islet, and there he manrooned me on an Island, and came with five Hands and carried all away that we had, and left us. And *Major Bonnet* told me he would go to St. Thomas's, and I might go along with him. I told *Capt. Memorizing*, I would not go a prating, for I did not like it.

*J. Trist*. Did you not share a shille before you came to *Cape Fear*?  
*Lopez*. Yes; but it was against my Will.

*J. Trist*. *Capt. Memorizing*, do you know any thing of this Man?  
*Capt. Memorizing*. All as I know, he told me he had a Wife and Children; and that he did not like that Course of Life. This is all I can say of him. *Clerk*. *Zachariah Long*, what have you to say?

*Long*. When we sailed, I knew nothing but that it was to go to St. Thomas's, till afterwards; and then I went to as the rest did.

And an Officer was sworn to keep the Jury.  
When after they had considered of their Verdict returned, and found the above-named *James Mellet* alias *Adieu*, *Thomas Prior*, *John Lopez*, and *Zachariah Long*, Guilty; and *James Rickett* alias *Rattle*, Not Guilty. Upon the Court adjourn'd till Saturday Morning.

Saturday, November the Tenth, 1718. the Court met according to Adjournment.

Then the Court proceeded to arraign *Edward Robinson*, *Robert Tucker*, *William Sear*, *John Rife*, *Ned Petersen*, *John Wilson* *Smith*, *Thomas Carman*, and *John Thomas*, upon the following Indictment.  
"The Jurors for our Sovereign Lord the King do upon their Oath profess, that *James Rickett* alias *Rattle*, late of London, Merchant; *James Mellet* alias *Adieu*, late of London, Merchant; *Thomas Prior*, late of Bristol, Merchant; *James Wilson*, late of Dublin, Merchant; *John Lopez*, late of Jersey, Merchant; and *Zachariah Long*, late of the Province of Maryland, Merchant, the Second Day of August, in the Fifth Year of the Reign of our Sovereign Lord George, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c."

To which Indictment *James Rickett* alias *Rattle*, *James Mellet* alias *Adieu*, *Thomas Prior*, *John Lopez*, and *Zachariah Long*, pleaded Not Guilty. Then the Court proceeded upon the Trial of those that pleaded Not Guilty.

"*Mariner*, and *John Thomas*, late of the Island of Jamaica, Merchant; the thirty-first Day of August, in the Fifth Year of the Reign of our Sovereign Lord George, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, &c. by Force, and Arms, &c. upon the High Sea, in a certain Place called *Cape Fear*, in the Latitude of Thirty-four or thereabouts, and within the Jurisdiction of the Court of Vice-Chancery of the Province of South Carolina, did maliciously and feloniously kill upon board, break, and enter a certain Merchant-Ship, called the *Fortuna*, *Thomas Rook*, Commander, then being a Ship of certain Persons (to the Jurors aforesaid unknown); and then and there maliciously and feloniously did make an Assault, in and upon the said *Thomas Rook*, and other his Mariners, (whose Names to the Jurors aforesaid are unknown). In the first Ship, against the Peace of God, and of our now Sovereign Lord the King, then and there being, maliciously and feloniously did put the aforesaid *Thomas Rook*, and others his Mariners of the same Ship, in the Ship aforesaid, to death, then being in corporal Fear of their Lives, then and there in the Ship aforesaid, upon the High Sea, in the Place aforesaid, called *Cape Fear*, in the Latitude of Thirty-four, or thereabouts, aforesaid, in the Ship aforesaid, and within the Jurisdiction aforesaid, maliciously and feloniously did break, seize, and carry away six Tunnets of Bees, of the Value of Thirteen Pounds, current Money of *Profficiency*; four Barrels of Bread, of the Value of Four Pounds, the current Money of *Profficiency*; one Barrel of Lard Oil, of the Value of Seven Pounds, the current Money of *Profficiency*; two Tunnets of Flour, of the Value of Twenty Pounds, the current Money of *Profficiency*; and twenty Barrels of Flour, of the Value of Twenty Pounds, the current Money of *Profficiency*; six China Plates, of the Value of Three Pounds, the current Money of *Profficiency*; seven iron-bound Blocks, of the Value of Forty Shillings, the current Money of *Profficiency*; ninety Fathoms of Rigging, of the Value of Three Pounds, the current Money of *Profficiency*; the said Pump, with Boxes and Breaks, of the Value of Twenty Shillings, the current Money of *Profficiency*; the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown); then and there upon the High Sea aforesaid, in the aforesaid Place, called *Cape Fear*, in the Latitude of thirty-four, or thereabouts, aforesaid, in the Ship aforesaid, and within the Jurisdiction aforesaid, being taken, in the aforesaid Ship, in the Cookery and Possession of the said *Thomas Rook*, and others his Mariners in the same Ship, from the said *Thomas Rook*, and others his Mariners of the said Ship, and from their Custody and Possession, then and there, upon the High Sea aforesaid, in the Place aforesaid, called *Cape Fear*, in the Latitude of thirty-four, or thereabouts, aforesaid, in the Ship aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c."

Who all pleaded Not Guilty.  
Then the Court proceeded upon their Trial.

The Petit Jury were sworn, whose Names are as followeth:  
*Timothy Boleyn*, Foreman. *Benjamin Dossie*. *John Lee*.  
*George Daulton*. *Hugh Duffley*. *Thomas Bus*.  
*John Rivers*. *Thomas Chambers*. *John Barton*.  
*William Sherry*. *Daniel Thompson*. *Richard Fairchild*.

Then the usual Proclamation for Information was made. And the Prisoners being bid to hold up their Hands, the Clerk charged the Jury with them thus.

*Clerk*. You the Gentlemen of the Jury that are sworn, look upon the Prisoners, and hearken to their Charge.  
Then the Indictment was read, as before.

*Clerk*. Upon this Indictment they have been arraigned, &c. as before.  
Then the *Witnesses* against the Prisoners were called.

*Clerk*. Call *Ignatius Pelt*, the Boatman.  
Who appeared and was sworn.

*Mr. Heyworth*. Do you know the Prisoners at the Bar?  
*Jes. Pelt*. Yes, Sir.

*Mr. Heyworth*. Give the Court an Account of the taking *Capt. Thomas Rook*, and plundering of his Ship.  
*Jes. Pelt*. *Capt. Rook* was in Company with two Vessels more, which we took, but did not hurt, till we came to *Cape Fear*.

*Mr. Heyworth*. Were the Goods mentioned in the Indictment taken out?  
*Jes. Pelt*. Yes, Sir.

*J. Trist*. Did all the Prisoners at the Bar receive their Shares?  
*Jes. Pelt*. Yes.

*Clerk*. Will any of you ask the King's Evidence any Questions? *Edward Robinson*, will you ask any Questions?  
*Edw. Robinson*. *Benjamin*, do you not remember when we left *Typhoon* Islet, it was with a Design to go to St. Thomas's?

*Jes. Pelt*. I do believe we might think it were going to St. Thomas's; but the first Vessel we saw, we consented to take, and you had your Share as well as the rest.

*Clerk*. *Robert Tucker*, will you ask any Questions?  
*Tucker*. No.

*Mr. Heyworth*. May it please your Honours, we will proceed to call another Evidence.  
*Capt. Peter Memorizing* called and swore.

*Mr. Heyworth*. Do you know the Prisoners at the Bar?  
*Capt. Memorizing*. I know them all.

*Capt. Rook*, please to give the Court an Account of the taking of *Capt. Rook's* Goods at *Cape Fear*.  
*Capt. Memorizing*. As for taking of *Capt. Rook*, I can say nothing, because he was taken by them before I was taken, but when we came to *Cape Fear*, they shared what they had.

*J. Trist*. And had all the Prisoners at the Bar their Shares?  
*Capt. Memorizing*. I did not see any of them retain, and they went amongst the rest when they did share.

*Clerk*. Will any of you ask the Evidence any Questions?  
The Prisoners sit as *Defendants*.



*Hepworth.* We will proceed to call another Evidence. Capt. Tye. Do you know the Prisoners at the Bar?

*Read.* I know them all.

*Mr. Hepworth.* Please to give the Court an Account of your being taken and plundered by them.

*Capt. Read.* After we were taken, Robert Taylor with some others came on board; and then we sailed to Cape Fear, where Capt. Monro was taken, and after that to Cape Fear.

*Mr. Hepworth.* Were these Goods taken out as are mentioned in the Indictment?—*Capt. Read.* Yes, Sir.

*J. Trott.* Did all the Prisoners receive their Shares?

*Capt. Read.* Yes, I did not see but what they did: They were all together when they shared.

*Clerk.* Will any of you ask the Evidence any Questions?

*Edward Robinson.* Capt. Read. When did you see me on board your Sloop?

*Capt. Read.* I cannot say I saw you on board; but you were with them when they shared.

*J. Trott.* If you were not on board the Sloop, you was one of the Crew; and, as I told you before, it's not they only are Pirates that go on board the Vessel, but they that find ready to assist are as much Pirates as the ship, and are as much concerned in the Fact.

*Clerk.* Will any of you ask any Questions?—*Prisoner.* No.

*Mr. Hepworth.* We will proceed to call another Evidence. *James King.* Do you know the Prisoners at the Bar?—*Killing.* Yes, Sir.

*Mr. Hepworth.* Give the Court an Account of what you know of the taking of Capt. Read.

*Killing.* I can say but little to the Matter all we came to Cape Fear, and there they shared the Goods.

*J. Trott.* Did you see the Goods taken out?

*Killing.* I cannot say I saw them all taken out; but I saw them a-shore of us taken together.

*Mr. Hepworth.* We will call another Evidence.

*Francis Griffin.* Capt. Read's Mate; who was sworn.

*Mr. Hepworth.* Do you know the Prisoners at the Bar?

*Griffin.* Yes, Sir.

*Mr. Hepworth.* Please to give an Account of the taking the Sloop you belonged to.

*Griffin.* After we were taken, Taylor and some more came on board, and Taylor fell to hacking and cutting the People with his Cutlafs, and cut one Mac's Arm. So then we went to Cape Fear all as Capt. Leijes, when Captain Monro was taken, and thence we sailed for Cape Fear.

*Mr. Hepworth.* Were all these Goods mentioned in the Indictment taken out? (That Part of the Indictment read.)

*Griffin.* Yes, Sir.

*J. Trott.* Did all the Prisoners take their Shares?

*Griffin.* I know nothing to the contrary.

*Clerk.* Will any of you ask the King's Evidence any Questions?

*Mr. Hepworth.* *James King.* You the Prisoners at the Bar, what have you to say in your Defence?

*Clerk.* Edward Robinson, what have you to say?

*Robinson.* I have nothing to say, more than what I have said.

*Clerk.* Robert Taylor, what have you to say?

*Robert.* I know nothing but we were going to St. Thomas's, when I engaged with Major Brown.

*J. Trott.* You was his Quarter-Master; and you was the Person that cut the Man with the Cutlafs, and abused the People.

*Clerk.* William Smith, what have you to say?

*Smith.* I was never on board Capt. Read.

*J. Trott.* You was never on board? What of that? You was one of the Crew, and confessed to it, and had your Share.

*Clerk.* Job Bayly and Neal Poterjoy, what have you to say?

*Prisoners.* We have nothing more to say.

*Clerk.* John William Smith, what have you to say?

*Smith.* It was never my Delight to go a-pirating; and when I was at Sea, I could not help what others did.

*J. Trott.* If it was not your Design at first, you afterwards consented to it.

*Clerk.* Thomas Cornew and John Thomas, what have either of you to say?

*Prisoners.* We have no more to say, than what we have said.

*Mr. Gov.* May it please your Honours, I think the Evidence here plainly proved the Prisoners at the Bar guilty of the Fact charged upon them in the Indictment; so that they were all equally guilty.

*J. Trott.* Gentlemen of the Jury, the Prisoners at the Bar stand indicted for Piracy and Piracy, committed on a Sloop belonging to Capt. Thomas Read: All the Evidence fully prove the Fact upon them, that they were all equally guilty, and all shared in the Goods and Plunder, and Taylor abused the People, and cut one Man with his Cutlafs, so that he added injury to his other Crimes. They all pretend they were under Force and Constraint; but it is but a Specimen of their own, without the least Proof: But there is full Proof of their countering. But I shall leave them to your Consideration. But the Case is so clear, that I believe you will be long before you return with your Verdict.

*Then an Officer was sworn to keep the Jury.*

*Who after they had considered of their Verdict, returned, and found the several Edward Robinson, Robert Taylor, William Smith, Job Bayly, Neal Poterjoy, John William Smith, Thomas Cornew, and John Thomas, Guilty.*

And the Jury were sworn, whose Names are as followeth:

*Timothy Rollings, Foreman, &c. (as before.)*

*Ag. Poll.* one of the Witnesses against the Prisoners, was called and sworn. He, and the rest of the Witnesses in general, gave the same Evidence against these Prisoners, as against the former, only they were more particularly examined as to Thomas Nichols, and George Daxton.

*Mr. Hepworth.* *Ag. Poll.* do you know the Prisoners at the Bar?

*Ag. Poll.* Yes, Sir, I know them all very well.

*Mr. Gov.* Please to give the Court an Account of the taking and plundering Capt. Read, and begin with Nichols.

*Ag. Poll.* Thomas Nichols was very much distressed on board, and did not join with the rest of the Company, and would not take the Share, and said, he hoped he should not continue long such doing.

*Foreman.* Do you know any thing of Daxton? How did he behave himself?

*Ag. Poll.* I did not see but he was as active as any of the rest, and took his Share as the rest did at Cape Fear.

*J. Trott.* And had all the Prisoners their Shares?

*Ag. Poll.* Yes, excepting Nichols.

*J. Trott.* Were the Goods mentioned in the Indictment taken out of Read's Sloop?—*Ag. Poll.* Yes.

*Clerk.* Will any of you ask the King's Evidence any Questions?

*No Questions asked by the Prisoners.*

*Mr. Hepworth.* We will proceed to call another Evidence. Capt. Monro, do you know the Prisoners at the Bar?

*Capt. Monro.* I know them all very well.

*Mr. Hepworth.* Please to give the Court an Account of these things Capt. Read's Goods at Cape Fear; and particularly how Nichols behaved himself.

*Capt. Monro.* When Nichols was on board my Sloop, he said several Times, he would give clear of them the first Opportunity, and he kept it would not be long if; and when Major Brown sent for all Hands on board the *Revenge*, he refused to go, till he sent word, if he would not come, he would make him; and when he went, he said, before he would fight, he would die: And he always kept himself from the Company, and from their Cabals.

*J. Trott.* Do you know any Thing of Daxton?

*Capt. Monro.* What I can say is: There was some Brown Bread upon Deck, and he said, it was fit for nothing but Niggers to eat; and I told him, I wished he might never want it. So they went, and brought some wheaten out of the Hole.

*Mr. Hepworth.* How did he behave himself?

*Capt. Monro.* I saw nothing but he was as the rest were.

*Mr. Hepworth.* Would any of you ask the King's Evidence any Questions?

*No Questions asked by the Prisoners.*

*Mr. Hepworth.* Please your Honours, we proceed to call another Evidence.

*James Killing sworn.*

*Mr. Hepworth.* Do you know the Prisoners at the Bar?

*Killing.* I know them all very well.

*Mr. Hepworth.* Please to give the Court an Account of what you know of their taking and plundering Capt. Read, and first begin with Nichols.

*Killing.* I remember when he was on board our Sloop, and Major Brown sent for him, when he went off, he said, he hoped to get clear of them, and he would do before he would fight.

*J. Trott.* Poll, do you know whether he did fight Col. Rhett, or not?

*Ag. Poll.* He did not fight; and I saw that Major Brown loved very well he had been that down by his Side, he had blowed his Brains out; for he had his Pistol ready.

*Mr. Hepworth.* How did Daxton behave himself?

*Ag. Poll.* I can say nothing for any of the rest, but that they were all as one, and had all their Shares.

*Clerk.* Would any of you ask the King's Evidence any Questions?

*No Questions asked by the Prisoners.*

*Mr. Hepworth.* We will proceed to call another Evidence. Capt. Thomas Read, do you know the Prisoners at the Bar?

*Capt. Read.* I know them all very well.

*Mr. Hepworth.* Please to give the Court an Account of what Goods were taken from you, and how the Prisoners behaved themselves; and first of Nichols.

*Capt. Read.* The most of the Time he was on board Capt. Monro's Sloop, I heard him say, he did not like the Course of Life; and the last Words I heard Major Brown say to him, was, that he would force us Men to go against his Will.

*J. Trott.* Can you say any thing of Daxton?

*Capt. Read.* As far as I can say, he did not see but he acted as the rest did.

*Daxton.* Capt. Read, it was against my Will.

*Mr. Hepworth.* Capt. Read, were these Goods taken out of you, as are mentioned in the Indictment? (That Part of the Indictment read.) Were all these Goods taken out?—*Capt. Read.* Yes.

*Clerk.* Will any of you ask any Questions? *George Daxton*, will you ask any Questions?

*George Daxton.* Capt. Read, when did you see me as active as any of the rest?

*Capt. Read.* Before Capt. Monro was taken, I thought you had been at Baltimore; but afterwards I saw an Difference.

*J. Trott.* You was one of Brown's Crew, one of that Company.

*Mr. Hepworth.* We proceed to call another Evidence.

*Francis Griffin.* Capt. Read's Mate sworn.

*Mr. Hepworth.* Do you know the Prisoners at the Bar?

*Griffin.* I know them all.

*Mr. Hepworth.* Give an Account of what you know of Nichols, and the rest of the Prisoners.

*Griffin.* As for Nichols, he was a Man I know nothing of, he being on board of *Monro's* Sloop.

*Mr. Hepworth.* What do you know of Daxton?

*Griffin.*



Griffin. I knew nothing of him till we were come to Cape Fear; and I saw no difference, but he shared among the rest.

Mr. Heyward. Were those Goods taken out of the Sloop, the Goods mentioned in the Indictment?—Griffin. Yes, Sir.

J. Trott. Now you the Prisoners, what you have to say in your Defence I shall be ready to hear.

Clerk. William Merryin, what have you to say?

Merryin. I have no more to say than I have said already.

Clerk. William Lewis alias Bona, what have you to say?

Bona. Nothing more.

Clerk. Samuel Bush.

Bush. When I went on board Major Bonnet, it was to go to Ed. Thomas's with him.

J. Trott. Why had you not continued at North Carolina, since you could not continue here?

Bush. I thought to have had better Business there.

Clerk. John Lott, William Edley alias Noby, Alexander Aswood.

Prisoners. We were forced to go, and did not know what they would do.

Mr. Gre. But did you not know when you did what you shared? You know that did not belong to you, did you not?

Clerk. George Rott, George Dunlop, Thomas Noddy, asked no Questions; only David declared in a Paper, which was read in Court, and contained a Testimony of his former Behaviour when in Sweden.

Mr. Gre. Plead your Masters and you Gentlemen of the Jury, I think it appears from the Evidence, that Noddy was under Constraint, and forced. As for Dunlop and the rest, they all took their Shares at Cape Fear.

J. Trott. Gentlemen of the Jury, the Prisoners at the Bar stand indicted for Robbery and Piracy committed on a Sloop belonging to Capt. Thomas Read. As for Noddy, I will say that he was not joined to the Company, and said, As for his Share they might do what they pleased, for he hoped to find out by some time; and when Major Bonnet sent for him on board, he refused to fight Cal. Rott; and if another had not been killed, Major Bonnet had blown his Brains out. Capt. Mansuering says, he refused his Share, and kept himself from the Company and from their Cabals; and he told them best for on board, that he would do before he would fight. And Capt. Read says, that Major Bonnet said, that he would put him upon, for he would give him more of his Will. And Killing says that he told him, that he would not fight Cal. Rott, when Major Bonnet sent for him on board the Revenge. So that I think it plainly appears he was under Constraint. But for Dunlop, he says of himself indeed that he was a Prisoner, and under Constraint; but I will say he was not, and that he took his Share, and was as the rest were. And Capt. Mansuering says, that he complied of the Read, that it was fit for none but Negroes; so I shall leave you to consider that. As for the rest, they have but little to say in their Defence, and I think the Evidence have proved the Fact fully upon them. But I shall leave this to your Consideration; and remember you have the Lives of these Persons in your Hands.

Then the Officer was sworn to keep the Jury:

Who after they had consulted of their Verdict, returned and found the shortbill William Merryin, William Lewis alias Bona, Samuel Bush, William Rott, William Edley alias Noby, Alexander Aswood, George Rott, and George Dunlop, Guilty; and Thomas Noddy, Not Guilty.

Then the Court adjourned till Monday Morning.

Monday, November the 31, 1718. The Court met according to Adjournment.

THEN the Court proceeded to arraign John Ridge, Matthew King, David Perry, Henry Virgin, James Rabbins alias Ratt, James Edley alias Miller, Thomas Rott, James Rott, John Lopez, and Zachariah Long, upon the following Indictment for taking Capt. Read.

The Jurors for our Sovereign Lord the King do, upon their Oaths, protest, that John Ridge, late of London, Merchant, &c. as before.

To which Indictment John Ridge, Matthew King, Henry Virgin, James Rabbins alias Ratt, James Edley alias Miller, Thomas Rott, John Lopez, and Zachariah Long, pleaded Not Guilty.

Then the Court proceeded upon the Trial of those that had pleaded Not Guilty.

And the Jury were sworn, whose Names are as followeth:

Samuel Parsons, Foreman. | Tobias Merriam. | Charles Morrell. |  
John Hedges. | Thomas Parrish. | John Greenleaf. |  
George Farwell. | Henry Gaudin. | Nicholas Stephens. |  
Lucas Greenbrough. | Benjamin Griffin. | William Horsey. |

The Witnesses against the Prisoners were the above-named.

Against John Ridge, Capt. Peter Mansuering, Capt. Thomas Read, James Killing, and Francis Griffin.

Who gave the same Evidence against these Prisoners as their trial before, and fully proved upon them all the Facts of physically taking Capt. Read.

Only the Witnesses were most particularly examined as to James Rabbins alias Ratt, who upon a former Indictment for taking Capt. Mansuering was acquitted.

Mr. Gre. Ignorant John, give an Account of James Rabbins.

J. Pell. He was at the left when we shared at Cape Fear.

J. Trott. How long was he with you before he joined himself to the Company, after he came on board?

J. Pell. As soon as we came to Cape Fear.

Mr. Gre. Did you see Rabbins have his Share?

J. Pell. Yes, Sir, they had all their Shares.

Mr. Gre. Was Rabbins on board Read's Sloop?

J. Pell. I cannot tell whether he was on board or not.

J. Trott. You looked upon him as one of the Company?

J. Pell. Yes.

Capt. Mansuering sworn.

Mr. Heyward. Please to begin with Rabbins, how he behaved himself.

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Capt. Mansuering. He was at the left of the Men were: He was on board the Revenge, and I think they called him James Ratt's sometimes.

J. Trott. Did he receive his Share?

Mansuering. He was among the Company when they did share.

James Killing called and sworn.

Mr. Heyward. Give an Account of Rabbins.

Killing. All I can say, he was at the left when in sharing Capt. Read's Goods, and was amongst them when they did share.

Capt. Read sworn.

Mr. Heyward. Give an Account of Rabbins.

Capt. Read. I did not know him before we came to Cape Fear; but I did not see but he was as active there in taking out the Goods as any of the rest.

J. Trott. Did he share among the rest?

Capt. Read. Yes, I believe he did, for he was among them when they shared.

Rabbins. I was forced to do what I did.

J. Trott. Did they force you to take your Share?

James Griffin called and sworn.

Mr. Heyward. Give an Account of Rabbins.

Griffin. I did not know him till we came to Cape Fear, and there I saw him on board the Revenge, and I did not see but that he did as the rest of the Company; and when they were sharing he was with them, and received his Share.

Clerk. What have you to say, Rabbins?

Rabbins. I never was on board Capt. Read.

J. Trott. But you was one of the Company.

Rabbins. I never confessed to take out the Goods.

J. Trott. But you confessed to take part of them; and they that shared the Goods were as much Pirates as those that took them out of the Vessel.

Then the Jury came up the Evidence.

And an Officer was sworn to keep the Jury.

Who after they had consulted of their Verdict, returned and found the said John Ridge, Matthew King, Thomas Rott, Henry Virgin, James Rabbins alias Ratt, James Edley alias Miller, John Lopez, and Zachariah Long, Guilty.

Again the Court then delivered a Bill of Indictment to the Grand Jury, against John Brerly alias Timber-head, Robert Bayl, Richard Sharp, Jonathan Clarke, and Thomas Gerrard, for feloniously and maliciously entering the Sloop Francis belonging to Capt. Peter Mansuering the Commander, and taking certain Goods out of the same at Cape Fear.

And another Bill of Indictment against the same Persons for feloniously and maliciously entering the Sloop Francis belonging to Capt. Thomas Read Commander, and taking certain Goods out of the same at Cape Fear.

The Grand Jury returned upon the said Bills of Indictment Guilty.

Then the Court proceeded to arraign the said John Brerly alias Timber-head, Robert Bayl, Richard Sharp, Jonathan Clarke, and Thomas Gerrard, upon the following Indictment.

"The Jurors for our Sovereign Lord the King do, upon their Oaths, protest, that John Brerly alias Timber-head, late of Bath-Town in North Carolina, Merchant; Robert Bayl, late of Bath-Town of the same; Matthew; Richard Sharp, late of Bath-Town, Merchant; Jonathan Clarke, late of Charles-Town, in the Province of South-Carolina; and Thomas Gerrard, late of Virginia, Merchant; the 24th Day of September, in the fifth Year of the Reign of our Sovereign Lord George, by the Grace of God, of Great Britain, France, and Ireland King, Delinquent of the Peace, &c. by Force and Arms, upon the High Sea, in a certain Place called Cape Fear, about half a Mile distant from the Shore, in the late Sloop of Thirty-four, or thereabouts, and within the Jurisdiction of the Court of Vice-Admiralty of this Province, &c. said Persons, did

practically and feloniously set upon board, he, &c. and enter a certain Merchant Sloop called the Francis, Capt. Peter Mansuering Commander, then being a Sloop of certain Tonnage, in the Jurors aforesaid (unknown) and then and there practically and feloniously did move an Article in and upon the said Peter Mansuering, and other his Mariners (whose Names to the Jurors aforesaid are unknown) in the last

Sloop, in the Presence of G-d, and our Sovereign Lord the King, then

and there being, practically and feloniously did put the aforesaid Peter Mansuering, and others his Mariners of the same Sloop, in the Sloop

aforesaid then being, in corporal care of three Lives; then and there in the Sloop aforesaid, upon the high Sea, in the Place aforesaid, called

Cape Fear, about half a Mile distant from the Shore, in the Latitude of Thirty-four, and within the Jurisdiction aforesaid, practically and feloniously did steal, take and carry away the said Sloop Francis, and also six Hogheads of Ram of the Value of Eight Pounds current Money

of the Island of Barbadoes, and one Tonne of Sugar of the Value of Seven Pounds current Money of the Island of Virginia, the Goods and Chattels of certain Persons (the Jurors aforesaid unknown) then and there upon the high Sea aforesaid, in the Place aforesaid, called Cape

Fear, about half a Mile distant from the Shore, in the Latitude of Thirty-four, or thereabouts, as aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Sloop in the Custody and Possession of the said Peter Mansuering, and other his Mariners of the Sloop aforesaid; and from their Custody and Possession, then and there upon the high Sea aforesaid, and in the Place aforesaid, called Cape

Fear, about half a Mile distant from the Shore, in the Latitude of Thirty-four, or thereabouts, as aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said Sovereign Lord the King

his Crown and Dignity, &c.

To which Indictment they all pleaded Not Guilty.

Then the Court proceeded upon their Trial.

The Jurors were sworn, whose Names were as followeth:

Timothy Ballony, Foreman. | Benjamin Dunlop. | John Lee. |  
George Dunlop. | Hugh Dwyer. | Thomas Bar. |  
John Rivers. | Thomas Chambers. | John Barrow. |  
Richard Strick. | Daniel Greenfield. | Richard Parrish. |

Then



Then the *Wingfield* was ordered to be taken in tow.  
Clerk. Call *Jonathan Paul*, who was James.  
Mr. *Hepworth*. *Paul*, do you know the Prisoners at the Bar?  
Mr. *Paul*. I know them all very well.  
Mr. *Hepworth*. Please to give an Account of what you know of them, and their Behaviour at *Cape Fear*.  
Mr. *Paul*. *John Brandy* and *Robert Boyd* came on board three or four Days after we came to *Cape Fear*.  
J. *Trist*. You took them first, did you not?  
Mr. *Paul*. Yes; we first off our Dory, and took them.  
J. *Trist*. I am a hence did they come?  
Mr. *Paul*. From North Carolina.  
Mr. *Trist*. How long after they came on board did they join themselves to the Company?  
Mr. *Paul*. *Brandy* did very soon, but *Boyd* did not so soon, tho' he did afterwards; and for *Boyd*, I do not know that ever he was joined to the Company.  
J. *Trist*. And how did *Boyd* behave himself?  
Mr. *Paul*. *Jonathan Clark* he and one came in from South Carolina; they went away from the Sloop; and then after some Days came again, but it was with *Hanger*, tho' he said that a was not.  
Mr. *Trist*. Were there any Goods taken out of *Capt. Read's* Sloop after he had joined himself a second time?  
Mr. *Paul*. I cannot say that certainly.  
J. *Trist*. Not you cannot say positively there were?—Mr. *Paul*. No.  
Mr. *Hepworth*. What do you know of *Gerrard*?  
Mr. *Paul*. I can say nothing to him.  
Clerk. Will any of you ask the Evidence any Questions? *John Brandy*, will you ask any Questions?  
Mr. *Brandy*. You know I often said I would not bear Arms, and that I desired no Share.  
J. *Trist*. But *John*, you know you had your Arms ready as well as the rest, and that you had your Share.  
Clerk. *Robert Boyd*, will you ask any Questions?—*Boyd*. No, Sir.  
Clerk. *Reverend Sharp*, will you ask any Questions?—*No*, Sir.  
Clerk. *Jonathan Clark*, Will you ask any Questions?  
Mr. *Clark*. *Paul*, don't you remember that I was absent, and one of the Negroes came and damned me, and asked me what I did there? why I did not go and work amongst the rest? and told me I should be used as a Negro.  
Mr. *Paul*. I do remember it was so.  
Mr. *Hepworth*. We proceeded to call another Evidence.  
Clerk. *Thomas Read* called and sworn.  
Mr. *Read*. *Capt. Read*, please to begin with *Brandy*.  
Clerk. *Read*. *Brandy* came on board one Morning very early, and helped me out several Goods.  
Mr. *Hepworth*. Do you know what Goods?  
Clerk. *Read*. Some Rum and Sugar.  
J. *Trist*. Do you know those Goods to be taken out?  
Clerk. *Read*. Yes.  
J. *Trist*. How did he behave himself when *Major Bennett* sent for him on board to fight *Colonel Riett*?  
Clerk. *Read*. I cannot tell.  
Mr. *Hepworth*. How did *Boyd* behave himself?  
Clerk. *Read*. I took him to be a Prisoner like myself at first, till he was sent for on board the *Raven* by *Major Bennett* to fight *Colonel Riett*.  
Mr. *Trist*. What made you think he was a Prisoner?  
Clerk. *Read*. Because he was not employ'd in any Business, as the rest were.  
J. *Trist*. That Day they engaged *Colonel Riett*, was he on board your ship?  
Clerk. *Read*. Yes, and *Major Bennett* sent for all Hands on board the *Raven*.  
Mr. *Trist*. What do you say of *Boyd*?  
Clerk. *Read*. I can say nothing of him.  
Mr. *Trist*. What have you to say of *Clark*?  
Clerk. *Read*. He ran away for a short, and then he return'd again after some Days.  
Mr. *Trist*. Was there any Goods taken out after he return'd?  
Clerk. *Read*. Yes, Sir.  
J. *Trist*. Did *Clark* himself take out those Goods?  
Clerk. *Read*. That I cannot tell; and as for *Gerrard*, he belong'd to *Memmory*; and to the Captain and to me together, he came and told us how they us'd him; but he was very sorry for what he had done, and was intent to make his Escape the first Opportunity he had to get away.  
Clerk. Have any of you any Questions to ask the King's Evidence?  
The Prisoners all in Silence.  
Mr. *Hepworth*. We proceed to call another Evidence.  
Francis Griffin sworn.  
Mr. *Hepworth*. Looking upon the Prisoners, do you know them?  
Griffin. I know them all.  
Mr. *Hepworth*. Begin with *John Riett*.  
Griffin. He was on board as far as time when we were at *Cape Fear*, and he was at the rest of the Company; and he said he had been sent by *Major Bennett* to go to the *Norfolk*, and he was sent as far as the *Norfolk*, for some Offence they had given him there.  
J. *Trist*. You looked upon him as one of the Crew?—Griffin. Yes.  
J. *Trist*. What do you know of *Boyd*?  
Griffin. He was on board of us some time; and when *Major Bennett* sent for him, on board the *Raven*, he went with them; but as for *Boyd*, I can say nothing to him, save of *Clark*, only he ran away, and in some Days he return'd again.  
Mr. *Trist*. We shall call another Evidence.  
Clerk. *Peter Memmory* sworn.  
Mr. *Memmory*. *Capt. Memmory*, do you know the Prisoners at the Bar?  
Mr. *Memmory*. Yes, I know them all very well.  
Clerk. *Memmory*. Please to give the Court an Account of what you know of them, and begin with *Boyd*.  
Mr. *Memmory*. *Brandy*, the 12th Day of *August* he came on board; and a little after he was on board, I did not see but he acted as the rest did,

and he hoped to come on with some of the *King's* Ship as for *Boyd*, he was on board *Read's* Sloop.  
J. *Trist*. What time you to say of *Boyd*?  
Mr. *Memmory*. Some time after he came to *Cape Fear*, and *Major Bennett* sent for him on board the *Raven*, in fact he would go on board if he had an Opportunity, and I never saw him among the rest of the Company.  
J. *Trist*. What have you to say of *Jonathan Clark*?  
Mr. *Memmory*. After we had been at *Cape Fear* some Days, *Jonathan Clark*, and one *Dubin*, came in, and *Major Bennett* sent for the Dory, and brought them on board, and after some Days, *Clark* and I went away, and was gone some Days, and then returned again, and then was ordered to work among the Negroes. As for my *John Riett*, he came and told me, he was not able to bear any longer, but was forced to run off with them, for they told him they would have no regard for the *Galley*, but would make a *Store of* him; but he did not receive any of their Goods; and when he was at home, he had the Character of an honest Man, and fought for his King and Country.  
Mr. *Hepworth*. We will call another Evidence.  
James Killing called and sworn.  
Mr. *Hepworth*. Do you know the Prisoners at the Bar?  
Mr. *Killing*. I know them all very well.  
Mr. *Hepworth*. Give the Court an Account of what you know of them during at *Cape Fear*.  
Mr. *Killing*. *Brandy* was put on board our Sloop there to work at his Trade, and would often say, he had a *Revenge* against *John* at the *Herr-Kill*, he hoped to revenge himself upon them.  
J. *Trist*. Why what had they done to him?  
Mr. *Killing*. He was in debt, and therefore he owed them a Grudge, but for the rest, I can say nothing.  
J. *Trist*. You the Prisoners, what have you to say in your Defence? I shall now be ready to hear.  
Mr. *John Brandy*, what have you to say?  
Mr. *Brandy*. Mr. *Boyd* and I was in a *lucky Canoe*, and we were afraid they would sink, and so we were obliged to keep along shore, and I stood up, and thought I saw a *Velfel* or two, and had to look again, and then I saw it was a *Velfel*. They first off their Dory, and asked if we would consent to go with them? And we said, No, But they said they would break the *Canoe*, and we might go where we pleased. So they made me confess to go on board the *Raven*, but I never joined myself while I was on board. And then I was sent on board *Capt. Read's* Sloop, and then I was sent to the *Herr-Kill*, but I never bore Arms, nor did I fight *Colonel Riett*.  
Clerk. *Reverend Sharp*, what have you to say?  
Mr. *Sharp*. After I was taken, I went on shore, and travelled four Days in the Woods without eating or drinking, and could find the way to no Plantation, and so was forced to return again, and I related to sign the Articles; and one of the Men came and told me I was to be shot, and I had the Liberty to choose the Place. Men that should do it, and the three of us went about to get Hands to beg me off, but I was refused to make my Escape the first Opportunity.  
Clerk. *Jonathan Clark*, what have you to say?  
Mr. *Clark*. The 12th of *August*, coming into *Cape Fear* with Mr. *Dubin*, he thought he saw the Mast of a *Velfel*, and I desired him to take the Helm that I might see, for if there was any *Velfel* it was *Payton*, but *Dubin* said it was nothing but an old Tree: But when we came further on, we saw three Sloops, and they sent off their Dory and took us, and carried us aboard the *Raven*; and *Major Bennett* asked us from whence we came? and I told him. He asked me where we were a going? we told him. The next Day he asked if I did not desire to go as they did? I told him no. Then I was away with a *Design* to get clear of them, but with *Hanger* was forced to return again. And they asked me if I would sign the Articles then? and I refused; and one of the Negroes came and damned me, and asked me why I did not go to the Pump, and told me that was my *Business*. And *Major Bennett* told me, if I did not, he would make me Governor of the first Island he came to; for he would put me ashore and leave me there.  
Clerk. *Thomas Gerrard*, what have you to say?  
Mr. *Gerrard*. Some time after we were taken, one of the Men came and asked if I would join with them? I told him, No. He said, I was but so like a Negro, and they made Slaves of us all of that Colour, if they did not join. So I did it with a *Design* to get clear of them the first Opportunity; and I never bore'd any of the Goods.  
J. *Trist*. *Paul*, did he never share?—Mr. *Paul*. He never did share.  
J. *Trist*. And did they threaten to make a Slave of him, if he did not join?—Mr. *Paul*. Yes.  
Mr. *Trist*. May it please your Honours, and you the Gentlemen of the Jury, as for *Brandy* and *Boyd*, it appears from the Evidence that they came to *Cape Fear* three or four Days after *Bennet*: *Brandy* he took up very soon, and *Boyd* some time after; and that there were several Goods taken out of *Capt. Memmory's* Sloop, and particularly Rum and Sugar. And as for *Clark*, there is no Evidence proves any thing fully on him; and therefore I think he may be looked upon as under Constraint and Force. As for *Gerrard*, I think the same, for though he signed the Articles, yet no Evidence proves that he did share any of the Goods: Nay, the *Boston* says he did not share; and if they did not comply with them, they would make a Slave of him all the Days of his life. And *Capt. Memmory* says he had the Character of an honest Man at home, and that he fought for his King and Country.  
J. *Trist*. Gentlemen of the Jury, the Prisoners at the Bar stand charged with Piracy, committed on a Sloop belonging to *Capt. Memmory*; and the Evidence have proved it fully upon *Brandy* and *Boyd*, and particularly, that there was Rum and Sugar taken out. *Brandy* took up very soon with them, and had his Share, and that he hoped to revenge himself on some at the *Herr-Kill*. *Boyd* did not take up so soon; but he did afterwards. As for *Clark*, he would have made his Escape, but could not, and *Major Bennett* told him he should die, and bid him chafe four Men to shoot him; and tho' he signed the Articles, he never shared, as *Paul* proves. As for *Clark*, he says he was forced to it, that he went away, and *Hanger* forced him to return again, and the Negroes in used over him; and *Major Bennett* told him, he would make him Governor of



an Island, and leave him there; and none of the Evidence proves that he shared any of the Goods. And as for *Garrett*, he was threaten'd to be made a Slave of, tho' indeed he had been better made a Slave than go a-pirating! But *Capt. Mennering* say he had the Report of an honest Man in his Country; and that he was faithful to his King and Country: So I shall leave these to your Consideration. And if you think they were under Force and Constraint, as indeed it appears to me, by the whole Course of the Evidence, that they were, then you ought to acquit them.

Then an Officer was sworn to keep the Jury. Who, after they had considered of their Verdict, returned, and found *John Brerly* alive Timberland, and *Robert Boyd*, *Gulley*, *Roland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, Not Guilty.

Then the Court adjourn'd till Tuesday Morning.

Tuesday, November the Fourth, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign the said *John Brerly* alive Timberland, *Robert Boyd*, *Roland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, upon the following Indictment.

"The Jurors for our Sovereign Lord the King do upon their Oath profess, That *John Brerly* alias Timberland, late of Barb-Town in North Carolina, Merchant, *Robert Boyd*, late of Barb-Town aforesaid, Merchant, *Mariner*, *Roland Sharp*, late of Barb-Town aforesaid, Merchant, *Jonathan Clarke*, late of Barb-Town, in the Province of North Carolina, Merchant, and *Thomas Gerrard*, late of Antigua, Mariner; the twenty-fourth Day of September, in the Fifth Year of the Reign of our Sovereign Lord George, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, at a certain Place call'd *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of Thirty five or thereabouts, and within the Jurisdiction of the Court of His Majesty of Great Britain, did jointly and severally, for upon, board, break, and enter a certain Merchant-Ship, call'd the *Fortuna*, *Thomas Road* Commander, then being a Sloop of certain Tonnage (as the Jurors aforesaid knoweth) and then and there got on board, and feloniously did make an Assault in and upon the said *Thomas Road*, and other his Mariners (whose Names to the Jurors aforesaid are unknown.) In the said Sloop, against the Peace of God, and of our now Sovereign Lord the King, then and there being, privately and feloniously, did put the aforesaid *Thomas Road*, and others his Mariners of the same Sloop, in the Sloop aforesaid, then being in company with their Lives, then and there in the Sloop aforesaid, upon the High Sea, in the Place aforesaid, call'd *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of Thirty-four, or thereabouts, and within the Jurisdiction aforesaid, privately and feloniously did steal, take, and carry away the said Sloop *Fortuna*, and also ten Barrels of Powder, of the Value of Twenty Pounds, current Money of *Providence*; two Firkins of Butter, of the Value of Fifty Shillings, like current Money of *Providence*; and three Tiers of Bread, of the Value of Six Pounds Ten Shillings, like current Money of *Providence*; the Goods and Chittels of certain Persons (to the Jurors aforesaid unknown) then and there, upon the High Sea aforesaid, in the aforesaid Place, call'd *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of Thirty-four, or thereabouts, as aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Sloop, as the Custody and Possession of the said *Thomas Road*, and others his Mariners of the Sloop aforesaid, and from their Custody and Possession, then and there, upon the High Sea aforesaid, in the Place aforesaid, call'd *Cape Fear*, about half a Mile distant from the Shore, in the Latitude of Thirty-four or thereabouts, as aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, His Crown and Dignity, &c.

Who all pleaded Not Guilty.

Then the Court proceeded upon their Trial.

The Jurors were sworn, whose Names are as follows:

<i>Sawad Pringle</i> , Foreman.	<i>Thomas Morner</i> .	<i>Charles Marlar</i> .
<i>John Hagley</i> .	<i>Thomas Fitchfield</i> .	<i>John Grosfield</i> .
<i>Gerrard Fawcett</i> .	<i>Henry Greville</i> .	<i>Nicholas Stephens</i> .
<i>Leont Stummeburgh</i> .	<i>John Ballentine</i> .	<i>William Harvey</i> .

Then the Witnesses were ordered to be called.

*Clerk*. Call *Isaacias Pell*. Who was sworn.

*Mr. Heyworth*. Fell. Give an Account first of *Brerly* and *Boyd*.

*Is. Pell*. As for *Brerly*, he was united himself to the Company; and when we engaged *Colonel Rhett*, he was as active as any of the rest. But for *Boyd*, he was sent on board *Capt. Road's* Sloop, and was there till *Major Bonnet* fell for him on board the *Revenge*, to fight *Colonel Rhett*.

*J. Trist*. And did he fight?

*Is. Pell*. He was wounded with one of the first Shot, and so was carried down into the Hold; so that he never did fight.

*Mr. Dine*. Why was he put on board the Sloop?

*Is. Pell*. To look after the Sloop, I suppose.

*Mr. Gre*. Had he his Arms ready when you engaged *Colonel Rhett*?

*Is. Pell*. Yes Sir: So we had all in general. But I did not see him use them.

As for the other three, he thought them to be under Constraint, and they did not fight *Colonel Rhett*.

*Clerk*. Will any of you ask the King's Evidence any Questions?

*No Question ask'd by the Prisoners.*

*Mr. Heyworth*. We proceed to call another Evidence.

*Capt. Peter Mennering* sworn.

*Mr. Heyworth*. *Capt. Mennering*, give an Account of the Prisoners of their fighting *Colonel Rhett*, and begin with *Brerly* and *Boyd*.

*Capt. Mennering*. They came on board, and *Brerly* soon became one

of the Company, and hoped to revenge himself on them at the *Hero-Kill*, and as for the rest did when they engaged *Colonel Rhett*. But as for *Boyd*, I took him to be a Prisoner for some Time.

*Capt. Mennering's* Evidence concerning *Sharp*, *Clarke*, and *Gerrard*, the same as on the former Trial.

*Mr. Heyworth*. Will any of you ask the King's Evidence any Questions?

*No Question ask'd by the Prisoners.*

*Mr. Heyworth*. We will call another Evidence.

*James Killing* call'd and sworn.

*Mr. Heyworth*. Give an Account of the Prisoners at the Bar; and of *Brerly* and *Boyd*.

*Killing*. As for *Boyd*, he was on board *Capt. Road's* after we engaged *Capt. Fear*, till they were sent for to fight *Colonel Rhett*; and I think he had been a Prisoner till then, and I talked very free to him. And for *Brerly*, he was in the rest of the Company.

*Mr. Gre*. Were there any Goods taken out after *Brerly* came on board?

*Killing*. Yes.

*Mr. Heyworth*. Do you know what Goods?

*Killing*. I cannot remember every particular Sort.

*His Evidence against the other three the same as in the former Trial.*

*Clerk*. Will any of you ask the King's Evidence any Questions?

*No Question ask'd by the Prisoners.*

*Mr. Heyworth*. We will call another Evidence.

*Capt. Thomas Road* call'd and sworn.

*Mr. Heyworth*. *Capt. Road*, please to give an Account of the Prisoners at the Bar, and first of *Brerly* and *Boyd*.

*Capt. Road*. As for *Brerly*, I did not see him but he acted as all the rest of the Company did.

*J. Trist*. What have you to say of *Boyd*?

*Capt. Road*. I thought him to be a Prisoner, and I desired to freely with him, which if he had discover'd, it had done me an Injury; for I found him with me might have been a Thirty-Gun Ship, and I told him should be glad of it as well as we.

*Foreman*. What did he wish to meet with a Thirty-Gun Ship for?

*Capt. Road*. To fire us down the Pinnace.

*His Evidence against the other three the same as before.*

*Clerk*. Will any of you ask the King's Evidence any Questions?

*None of the Prisoners ask'd any Questions.*

*J. Trist*. You the Prisoners may now speak what you have to say.

*Clerk*. What have you to say, *John Brerly*?

*Brerly*. When *Mr. Boyd* and I came in at *Cape Fear*, we saw these Ships; and then came off a Day with some Handed, and killed us, and then carried us on board; but we did not know that they were Maroons. But *Mr. Boyd* smother'd and shook like a Leaf; and I told him not to be afraid. So they carried us on board.

*J. Trist*. And so you united yourself with them to make up the Company?

*Brerly*. I was forced to do what I did.

*Clerk*. *Robert Boyd*, what have you to say?

*Boyd*. After we came to *Cape Fear*, and was taken by *Bonnet's* Men, I was on board the *Revenge* for some Time, and they asked me to sign the Articles, the which I refused; and *Major Bonnet* told me, if I did not, he would murder me on an Island, and leave me. And after I was sent on board *Capt. Road's* Sloop, I had nothing but the Possession I loved on; I never had any other more. And when *Major Bonnet* sent for all on board to fight *Colonel Rhett*, it would have been great Death for any to mutiny, and I was wounded with one of the first Shot.

(The other three made it appear they were innocent, as in the other Indictment.)

*Mr. Gre*. May I please your Honours, and you the Gentlemen of the Jury, the Evidence proves the Fact fully on *Brerly*, that he was engaged with *Bonnet* after he was taken, and that he acted as the rest of the Company did; and that he hoped to be revenged on some at the *Hero-Kill*. As for *Boyd*, though he was on board the *Pinnace*-Ship, he never took Part with them, and he refused to sign a Thirty-Gun Ship, that they might be set at Liberty. And *Capt. Road* took him for a Prisoner, as he was sent for on board the *Revenge*; and then the Boatwain says he did not fight. As for the other three, I think it appears they were under Constraint and Force.

*J. Trist*. Gentlemen of the Jury, the Prisoners at the Bar stand indicted for practically taking *Capt. Road*, in the Sloop *Fortuna*. As for *Brerly*, the Evidence proves it very plain and fully upon him, that he took up very free with them, and did hope to revenge himself upon some of the *Hero-Kill*, and that he engaged against *Col. Rhett*. As for *Boyd*, *Capt. Road* looked upon him as a Prisoner; and that he had such a close with him, that if he had discover'd a so *Bonnet's* Crew, it had not hurt him much hurt; and the Boatwain says he did not fight *Col. Rhett*. And as for the other three, I think it hath been fully proved they were under Constraint. But I shall leave it to your Consideration.

Then an Officer was sworn to keep the Jury.

Who, after they had considered of their Verdict, returned, and found *John Brerly* alive Timberland, *Gulley*; *Robert Boyd*, *Roland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, Not Guilty.

Then the Court adjourn'd till Wednesday Morning.

Wednesday, November the Fifth, 1718. the Court met according to Adjournment.

THEN *Robert Tucker*, *Edward Robinson*, *Ned Peterson*, *William Scott*, *John Bayly*, *John Wilson* Sworn, *Thomas Corran*, *John St. John*, *William Mennering*, *William Livers* also Sworn, *Samuel Birch*, *William Hearn*, *John Lee*, *Edmund Edley* also Sworn, *Alexander Anson*, *Gray Robt*, *George Dine*, *John Roper*, *Matthew King*, *David Perry*, *Henry Papp*, *James Ralston*, *James Miller* also Sworn, *Thomas Price*, *John Lopez*, *Zachariah Long*, *James Wilson*, *John Brerly* alias Timberland, and *Robert Boyd*, who had been convicted of Piracy, as appears by the above Records, were brought to the Bar, and were severally asked what they could say why Judgment of Death should not pass upon them.



And they having Nothing to allege in arrest of Judgment;  
Then Proclamations for Show was made, while the Judge of the Court  
of Vice-Admiralty pronounced Sentence of Death upon the Prisoners.

J. Trev. You the Prisoners at the Bar, Robert Taster, Edward Robinson, Nial Porter, William Scott, Job Berley, John William Smith, Thomas Jones, John Thomas, William Morris, William Lacey alias Eric, Samuel Bond, William Hunt, John Laid, William Eddy alias Nelly, Alexander Burch, George Ray, George Daven, John Ridge, Matthew King, Daniel Perry, Henry Forgie, James Robison, James Miller alias Affili, Thomas Price, John Lopez, Lazarus Long, James Waller alias Affili, and Robert Scott, stand here convicted of Piracy.

You have been indicted both for acts of Piracy; but you know upon the Trial you were fully proved against each of you, that you jointly took the ship Vellus from your friend Major Bennett, and sailed from Tynes to the North Carolina.

So that many of you might have been convicted on almost more Indisputable of Piracy.

Besides, several of you were proved to be Pirates before that Time, as appearing to Norton's Crew; and so were guilty of the several Piracies committed while you belong'd to him.

You cannot but acknowledge that you have all of you had a fair and sufficient Trial.

You were fully bound, not only as to all you could pretend to say in your own Defence, but also as to what you allege in Mitigation of your Crimes. And indeed, when you saw that the Facts laid in the Indictment were fully proved against you, that most of you pleaded Not Guilty for Fear to take, yet in the open Court, upon your Trials, most of you acknowledged the Facts charged upon you. Therefore no one can think but that you were all of you fully proved Guilty; and your own Conscience will oblige you to acknowledge the same. So that there is not any of you who can complain of any Hardships at your Trials.

As to the Crime that you are convicted of, which is Piracy, the Law and Wisdom of it is evident to the Reason of all Men; so that it needs no Words to aggravate the same; it is as destructive of all Trade and Commerce between Nation and Nation, that Pirates are called Enemies to Mankind, much sorer in Fact as they ought to be in Law; and they are torn'd in our Law Books and Rights of War, and therefore is the fearful, as well as Duty, of all Governments to bring back Offenders to Punishment.

As to the Circumstances of your Crime in fact, that no one can think but that the Sentence of Death which will now be laid upon you is justly due to you for the same; yet as Pity and Compassion, even to the worst of Criminals, when brought to Punishment, are natural to all Men who have as strong all Sense of Humanity, but much more firmly implanted in the Hearts of Christians; therefore surely it cannot but be a very melancholy Spectacle to see so many Persons in the Prime of their Years, in perfect Health and Strength, deeping into the Gallow: And which is a more fearful Consideration, that they are in the height of their Sins; and therefore, without the infinite Mercies of God, through the Satisfaction of Christ, must necessarily fall into the Dwellings of everlasting Misery.

And indeed, most sad and deplorable is the Condition you have brought yourselves to: To be adjudg'd by the Laws of your Country unworthy any longer to live, and to tread the Earth, or breathe the Air; and that no further Good or Benefit can be expected from you but by the Example of your Deaths; and to stand like Marks or fatal Rocks and Sands, to warn others from the same Shipwreck and Ruin for the future.

As most of you have been Mariners by Profession, and every one of you have several Times been at Sea; so I cannot but wonder, this being so often at Sea, you should not consider the great Power of God in creating the Sea, his Providence in preserving them who pass upon it; and consequently, that such Thoughts should not come in you a Dread of his Power, and a Love of his Goodness.

The Consideration of God's Power in making the Sea, and setting Bounds to the raging Waters thereof, is said in an Argument by God himself, why Men should fear him; for thus God expresseth it by the Prophet Jeremiah: Fear ye not me? fear the Lord: will ye not tremble at my voice, which have placed the Sand for the Trood of the Sea by a perpetual Storm, that it cannot pass it; and will the Waves thereof lift themselves up, so they not presently be? will they rise up then they pass over it, Jer. 3. v. 22. Or is it inexpressible in the Book of Job: At thine Word the Sea came, but as a foetus, and have said thy great Word be feared, Job. 38. v. 11.

The Floods which, that they say do drown us, the Sea is said, is that do drown us in great Waters; thus they say the Winds of the Land, and his Winders in a Day. For he commanded and rebuked the storm Wind, which lifteth up the Waves thereof. They must say to the Nations, they say do drown again in the Depth, their Soul is vexed because of Tyranny. They say to us and say, and after his great Works, and are at their Waters. Then they cry unto the Lord in their Distress, and he delivereth them out of their Distress. He rebuketh a storm in a Gale, so that the Waves thereof are still. Then they are glad because they are saved, so he delivereth them from their desired Haven. But the practical Inference that he draws from these is, That Men should praise the Lord for his Goodness, and for his wonderful Works to the Children of Men, Psal. 107. v. 23, 24, 25, 26, 27, 28, 29, 30, 31.

But instead of leaving a Sense of God's Power and Goodness, in preserving them and others upon the Sea, your frequent Provocations have led you into a Contempt of the Danger you were in; and you thereby brought upon your Deliverance. And tho' you could not but see for the many natural Dangers that attend the Sea, and think you had occasion to go upon the same, yet you were misled that you would contribute what in you lay to the safety thereof, by the frequent Rapine and Murders which you committed. So that what the Prophet saith of the Pride of the Tyrants, may be apply'd to you, that you could say Terror is in all that have the Sea; Ezek. 26. v. 17.

Altho' it may be said, while you were in your fleeting Prosperity, and were upon your committing Spoils and Robberies without contrition, you might make a vow at your Sea, Prov. 14. v. 9. and Job. 10. v. 23, and say in your Hearts, God hath forsaken me, he hath left me, he will never be to me, Psal. 137. v. 11, 12, v. 13, v. 14, v. 15, and Job. 12. v. 13. you now that you see the Good Hand hath reached you, and his Power hath brought you to this

public Justice; I hope your present unhappy Condition hath a good Effect upon you, that it hath rais'd in you more serious Thoughts; and that you are now sensible of the greatness of your Sin, and that you will sincerely repent you of the same.

As to the great Evil and Sinfulness of the Facts you have committed, surely you cannot but know, that it is one of the express Commandments of God, Thou shalt not kill, Exod. 20. v. 15, and the Apostle St. Paul expressly affirms, that Thou shalt not inherit the kingdom of God, 1 Cor. 6. v. 15.

But then remember that to Thigh you have added the Sin of Murder, in betraying those Persons who were sent by lawful Authority to suppress you, and to put a Stop to your wicked Actions. For you bring no man authorized with the Sword, or to fight any one, every one of those Persons who fell by your Hands, were murdered; and their blood cries out for Vengeance against you: For it is the Value of Nature, as well as the revealed Law of God, that Whoso sheddeth Man's Blood, by Man shall his Blood be shed, Gen. 9. v. 6.

It is the Commandment of God, Thou shalt do no Murder, Exod. 20. v. 13, and the Apostle enumerating the Works of the Flesh, amongst the evil practices Murder is; and then concludes with these remarkable Words: Of which I tell you before, as I have told you in your past, that they which do such things shall not inherit the Kingdom of God, Gal. 5. v. 21. And Murderers are threaten'd to have their part in the Lake which burns with Fire and Brimstone, which is the second Death, Rev. 21. v. 8. See ch. 22. v. 15. Words which carry that Terror with them, that confidence of your Conscience, and your Guilt, surely the Sound of them will make you tremble; For now you shall mark everlasting Burnings; Isa. 33. v. 14.

I suppose you all know that you must appear before the Tribunal of Christ; from whose infinite Knowledge none of your Actions can be hid, and from whose infinite Power no one can release you or proceed you; and from whom, without a true and unfeigned Repentance for all your Sinfulness, you can expect no other than that dreadful Sentence of Condemnation, Depart from me, ye cursed, into everlasting Fire, prepared for the Devil and his Angels, Matth. 25. v. 41.

I do not speak this to overwhelm you with Sorrow, much less to drive you into Despair of God's Mercy, which is one of the worst of Sins, and which I hope you will not add to your other Offences against God. But I mention this to you, to make you sensible of the great Danger of your Condition, without true and unfeigned Repentance. For I trust I can give you no hopes of Pardon from God, I hope you will improve the short Time you have now left you, to make your Peace with God, and to obtain Pardon from him.

And I wish that what I now say to you in this your deplorable Condition, may make you all sensible of the Greatness of your Offences, that if you may become fully penitent; which if you are, you may yet hope for Mercy from God: For tho' your Sins be as Scarlet [even dyed as Blood] yet he can make them white as Snow, Isa. 1. v. 18.

Therefore if you will now turn unto God by a true and unfeigned Repentance, he will not refuse you nor reject you, even now in your great Distress.

For the Threatnings declared by God in the Scripture against Sinners, must always be understood against impenitent Sinners; for God hath declared himself to be Merciful and Gracious, Exod. 34. v. 6. And that he hath no Pleasure in the Death of the Wicked, but that the Wicked were from his way and live, Ezek. 33. v. 11. ch. 18. v. 23. And hath promised, that when he hath fed, he shall have his soul alive, Jer. 23.

But be free remember that you must go to God, in and through the atonement and Intercession of his Son Jesus Christ, who hath made Satisfaction to the Father of God for us: For he is our Advocate with the Father; and he is the Propitiator for our Sins, John 2. v. 1, 2. For his Blood cleanseth us from all Sin, ch. 1. v. 7. Know, therefore, that there is none other Name under Heaven given among Men, whereby we must be saved, but only by the Name of the Lord Jesus, Acts 4. v. 12.

But then consider how he invites all them that believe and are heavy laden with their Sins to come unto him, and he will give them rest, Matth. 11. v. 28. He will not break the bruised Reed, nor quench the smoking Flax, Isa. 41. v. 23, compared with Matth. 12. v. 20. I in the Apostle tells us, that Christ Jesus came into the World to save Sinners, 1 Tim. 1. v. 15. And he himself saith us, that he came to find and save that which was lost, Luke 9. v. 10. Matth. 18. v. 13. And hath promised, that he that cometh unto him, he will in no wise cast him out, John 6. 37.

Do not, therefore, but that if you will now sincerely turn to God, he will accept you, and pardon and improve you your Sins.

But know that the Condition of these and other the Promises of God made to Sinners, is Faith and Repentance. And great Sins (such as yours are) must have great Repentance. You must earnestly cry unto God for Pardon and Remission of your Sins, and particularly that he would deliver you from Blood-guiltiness, Psal. 51. v. 14.

And do not mistake the Nature of Repentance, to be only barely a Sorrow for your Sins, by reason of the Evil and Punishment which they have now brought upon you. But your sorrow for your Sins must arise from the Consideration of your having offended a gracious and merciful God. To which should be added, a sincere Repentance and an actual Amendment for the Future. Indeed, such is your unhappy Circumstances, that you cannot give any actual Proof of the Amendment of your Lives; but remember that God knows the Heart.

Time will not permit me to enlarge upon the Nature of Repentance, and of the many Mistakes that Men make in that great Duty; Neither intend will I to far presume to meddle out of my own Possession. You may have their Matters better explained to you by some of the Ministers of this Province, whom you may desire to attend you, and fit you for Death; and then then you may expect more full and particular Directions: For the Priests shall not know Knowledge, and you shall not know the Law at their Mouths, for they are the Messengers of the Lord, Mal. 2. v. 7. And the Ambassadors of Christ; and it is then is contained the Word [or Doctrine] of Revival, 1 Cor. 9. v. 19, 20.

Thus having discharged my Duty to you as a Christian, by exhorting you to an unfeigned Repentance for your Crimes, and Faith in Christ;



by whose Merits alone you shall hope for Pardon and Salvation, I must now do my Office as a Judge.

The Sentence that the Law hath appointed to punis upon you for your Offences, and which this Court doth therefore award, is,

That you the said Robert Tackett, Edward Robinson, Neal Patterson, William Scott, Job Bayley, John William Smith, Thomas Carnan, John Thomas, William Morrison, William Livers alias Lee, Samuel Booth, William Hewitt, J. de Levie, William Eddy alias Nedy, Alexander Anand, George Rots, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robinson, James Miller alias Millet, Thomas Price, John Lopez, Zachariah Long, James William, John Bently, and Robert Broad, shall sit from hence to the Place from whence you came, and from thence to the Place of their abode, where you shall be severally Laid by the Neck, till you are lawfully tried.

And the said Judge Henry Robinson to carry out of your Bonds.

After the Condemnation of the above-mentioned Persons, Thomas Nichols, Rowland Elery, Jonathan Clarke, and Thomas Gervard, who were found Not Guilty, were discharged.

And then the Court adjourn'd to Monday the 10th Instant.

On Saturday, November the 8th, 1718, Robert Tackett, Edward Robinson, Neal Patterson, William Scott, Job Bayley, John William Smith, John Thomas, William Morrison, Samuel Booth, William Hewitt, William Eddy alias Nedy, Alexander Anand, George Rots, George Dunkin, Matthew King, Daniel Perry, Henry Virgin, James Robinson, James Miller alias Millet, Thomas Price, John Lopez, and Zachariah Long, were executed at the White Point near Charlton-Tree, according to the above Sentence.

Monday, December the 10th, 1718. The Court met according to Adjournment.

THEN the Court proceeded to assign Stede Bonnet alias Edwards alias Thomas, [who had fled, and was taken Nov. 6.] for feloniously and piratically taking the Ship *Friendship*, with her Goods, Capt. Peter Mansuering Commander; upon the two following Indictments.

The Jurors for our Sovereign Lord the King, do on their Oath protest, That Stede Bonnet alias Edwards alias Thomas, late of Barbadoes, Merchant; Robert Tackett, late of the Island of Jamaica, Merchant, &c. &c. before.

The Jurors for our Sovereign Lord the King, do on their Oath protest, That Stede Bonnet alias Edwards alias Thomas, late of the Island of Barbadoes, Merchant; David Henot, late of the Island of Jamaica, Merchant; Edward Robinson, late of Newcastle upon Tyne, Merchant, &c. &c. before.

To both which Indictments he pleaded Not Guilty.

J. Trott. You are to come upon your Trial this Day, upon the first Indictment, and you have pleaded Not Guilty: to that what Evidence you have must be ready.

Bonnet. My pleading Not Guilty is because I may have something to offer in my Defence; and therefore I hope none of the Bench will take it amiss.

The Court proceeded upon his Trial on the first Indictment, for piratically taking the Ship *Friendship*, Capt. Peter Mansuering Commander.

Then the Jurors were sworn, whose Names are as followeth:

Timothy Balfour, Foreman.	Jonathan Meigs.	Thomas Lambell.
George Decker.	John Lee.	Henry Boston.
William Bliff.	Thomas Bre.	Myth Wilkin.
Benjamin Dyer.	James Mansel.	Clair Tye.

Mr. Heyward. May I please your Honours, and you Gentlemen of the Jury? The Prisoner who now stands arraigned at the Bar, has been guilty of many Piracies, committed many Robberies, ruined many Families, and been the Occasion of many civil and religious Murders, and all that within a very short Time past. Should I here defend him on all the Particulars, I shall take up too much of your Time. You know (all of you) I believe, after what manner he lately fled from Justice. Nay, he was not satisfied with his own Escape, but he must temper with the Master Mariner to run away with him, who has been since killed. And I believe the Prisoner at the Bar cannot, upon Reflections, but think himself unanswerable for that Man's Death. Nay, some people took particular notice of the Prisoner's Behaviour at the Time when Thomas bearing out the Command from him, he began to rebel upon his past Course of Life, and was then filled with such Horrors, that he was perfectly confounded with Shame at the many detestable Crimes he had been guilty of, and said, he would gladly leave off that way of living, being fully tired, and having got disgusted by it; but he should be distressed ever to see the Face of an Englishman. Therefore if he could not get to Spain or Portugal, where he might be undiscovered, he would live and die in the same Castle of Life, viz. in Piracy and Robbery.

The Trial of this Man ought to be the more considerable, as he was the great *Reynolds* of these; who has seduced many poor, ignorant Men to Church's Course of Living, and ruined many poor Wretches; some of whom lately *Jeffrey*, who with their last Breath expressed a great Satisfaction at the Prisoner's being apprehended, and charged the Reins of the Order and Loss of their Lives entirely upon him.

We shall now proceed to call our Evidence.

Mr. Heyward. Mr. Trott, begin with the first Indictment, and when you were first acquainted with the Prisoner Bonnet.

J. Trott. It was at the Bay of Honduras, but Capt. Trott was Commander in Chief.

Mr. Gen. This I observe was before they went to *Typhail-Inlet*, at North-Carolina.

J. Trott. Yes, Sir; for when we came to *Typhail-Inlet*, *R. Henry* was chief Quarter-Master; and we went out to go to St. Thomas's, in Commission to go a privateering against the Spaniards, but the first V.

we saw was took.

Mr. Heyward. What did you take out of her?

J. Trott. We took three Provisions.

Mr. Gen. Had you any Provisions on board the *Range*?

J. Trott. Yes, Sir, some Beef, Pork, and Flour.

Mr. Heyward. What was the next V. after you took?

J. Trott. A Ship belonging to Bermuda. After we had discharged her, we took another in which were eight Negroes. We took out two, and left three Men and two Women, and sent three Hands more who made eight, and the next Day we gave Chase to two Ships belonging to *Gloucester* in *Salisbury*, and in the morning we came up with them, and they turned Tail, and we drove two of the most after them. And after we had taken four Prisoners at other Goods we discharged them. We took, as I remember, two V. belonging to *Bright*, when Capt. Row was taken.

Mr. Gen. What do you know of Capt. Mansuering?

J. Trott. We were at an Anchor near Cape James alias Cape Mingo, and a little before Night we saw a Ship come to an Anchor at the Mouth of the River, and we sent off the Dory with five Hands, and in a little Time they returned with Capt. Mansuering; and the next Day we hailed the Ship for a while, and the Negroes, which we had taken before, and haled out several Hoards of Malt and Rum, and put them on board the Cannon, and put some Pitch and Tar on board the Ship.

Mr. Gen. Was you Order for the doing of that?

J. Trott. I cannot tell, Sir.

Mr. Gen. Did you for Major Bonnet on board *Mansuering*'s Ship?

J. Trott. I cannot say he was, neither do I know certainly that he was not.

J. Trott. Was he not your Commander?

J. Trott. He was called our Captain, as he was.

Mr. Gen. Have you any Questions to ask the King's Evidence?

Bonnet. Don't you believe in your Commission, that when we left *Typhail-Inlet*, it was to go to St. Thomas's? And there were near fifty Hands, and they continued to a morning?

J. Trott. I did believe it was to till after we were out.

J. Trott. That was what they accused you for on your Trial; that you deceived them, under a Pretence of going to St. Thomas's.

Bonnet. I am sorry that they should take the Opportunity of my Absence to accuse me of that which I was free from.

Mr. Gen. If there were forty Hands on board, it cannot be thought that he had Power to command them.

J. Trott. But he was Commander in Chief among them, and that after they were a praying; Was it not so, Bonnet?

J. Trott. He went by that Name; but the Quarter-Master had more Power than he.

J. Trott. What do you mean by your Evidence? Was he Commander in Chief, or was he not?

J. Trott. He was.

J. Trott. Then who had the greatest Power?

Mr. Gen. Do you know if he received his Share of Capt. Mansuering's Goods? Or did any receive it for him?

J. Trott. Sir, it was the Quarter-Master took care of that.

J. Trott. He was Commander in Chief, and therefore I suppose he had a double Share?

J. Trott. I did never enquire whether he had or not.

J. Trott. Bonnet, tell the Truth; had he his Share, or had he not?

J. Trott. He had it.

Mr. Gen. Bonnet, did you ever hear me force any Man to go?

J. Trott. No, Major, I cannot say I did.

Bonnet. Do you not remember, that when we left *Typhail-Inlet*, and they began to quarrel about Provision, that I said I would leave the Ship?

J. Trott. I do remember you said so.

J. Trott. But if you did take leave for Provision, would you leave them without V. and Family?

Bonnet. It was contrary to my Inclination.

Mr. Heyward. We proceed to call another Evidence.

Mr. Heyward. Capt. Peter Mansuering, look upon the Prisoner at the Bar, do you know him?

Mansuering. I know him very well.

Mr. Heyward. Give the Court an Account of your being taken by him.

Mansuering. I arrived at Cape James alias Cape Mingo, the thirty-first of July, and after being at an Anchor four times, we saw a Dory come at 11 o'clock. So I was ordered on board the *Range*.

J. Trott. And before whom was you brought?

Mansuering. Before the Man at the Bar, Capt. Trott; he was called then, and he gave him the Papers, and at 1 o'clock he said he would take him to his Cabin. Next morning they haled the Ship long-side the Schooner, and haled out the Rum and Malt out of the Ship, and put on board the Schooner; and the Gift of Malt was taken in Company to Cape Town.

Mr. Gen. Did you ever hear him use Orders? Take out any Goods?

Mansuering. He was on board the Ship himself when it was done.

Mr. Heyward. Do you remember any particular Goods taken out of *Mansuering*'s Ship?

Mr. Trott. I will ask the King's Evidence any Questions?

Bonnet. I will ask all that matter you sent for me to share among the rest.

Mansuering. You was in the Round House, and a Boodle and some Provisions brought, and I saw you take it, and give it to the Negroes to put into the Chest.

Bonnet. There were several that I kept their Shares for; but it was not mine.

Mansuering. It was put away for your Order.

Bonnet. Did you ever hear me do any thing out of the Ship?

Mansuering. Major Bonnet, I am sorry, you should ask me that Question; for you know you did. Which was my All that I had in the World.



that I do not know but my Wife and Children are now perishing for want of Bread in New-England. Had I been only myself, I had not cared to be taken: but my poor Family grieves me.

*Capt.* Will you ask any more Questions?

*Answer.* No, Sir.

*Mr. Haycraft.* We will call another Evidence.

*(John King called and sworn.)*

*Mr. Haycraft.* Give the Court an Account of your being taken, and what Goods were taken out of you.

*John King.* The Evidence given in the last Relation as in the former Trial; and was added, That Major Basset ordered him to go and show which was the Room, and which was the Mall.

*Mr. Haycraft.* Do you remember in particular what Goods were taken out of you?

*John King.* Yes, Sir.

*Mr. Haycraft.* Were the twenty-one Haystacks of Malt, and the

*John King.* Taken out?

*John King.* Yes, Sir.

*Mr. Haycraft.* And what was Major Basset's Order?

*John King.* My Lord Basset said it was to be done.

*Judge.* Did you not say that you were taken out of the Mall?

*John King.* I did not carry it away, and it was contrary to my Inclination.

*Judge.* Did you not order him to do it to be done, and yet it was contrary to your Inclination?

*Mr. Haycraft.* Will you ask the King's Evidence any Questions?

*Answer.* No, Sir.

*Mr. Haycraft.* We will call another Evidence.

*(John King called and sworn.)*

*Mr. Haycraft.* Please to give the Court an Account of Capt. Mowbray's being taken.

*John King.* After we came to Cape Town, we saw a Ship come to an Anchor, and Major Basset ordered the Duty, with five Hands to go off, and a great bill an Hour ship came on board in the Capt. Mowbray.

*Mr. Haycraft.* Was it on board the Captain when the Duty was taken out?

*John King.* Yes, Sir.

*Mr. Haycraft.* Did Major Basset give Orders to take out those Goods?

*John King.* Yes, Sir.

*Mr. Haycraft.* Were you on board then?

*John King.* Yes, Sir.

*Mr. Haycraft.* Did you not see the Goods taken out?

*John King.* Yes, Sir.

*Mr. Haycraft.* Did you not see the Goods taken out?

*John King.* Yes, Sir.

*Mr. Haycraft.* Did you not see the Goods taken out?

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*Mr. Haycraft.* Did you not see the Goods taken out?

*John King.* Yes, Sir.

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*John King.* Yes, Sir.

*Mr. Haycraft.* May I make your Honours, and the Gentlemen of the Jury, the Prisoner at the Bar hath pleaded *Not Guilty* to the Indictment, but the *Prosecution*, they do seem to bear a very great Affection to him, and to you that he was Commander in Chief when they at the Time when Capt. Mowbray was taken. Capt. Mowbray I tell you, when he was brought on board the *Revenue*, he was brought more than, and so other, and that he delivered his Papers in hand, and he for his Share brought to him in the *Revenue*, and put into the Chest.

Then Capt. Mowbray's *Share* was, Major Basset was on board the Ship, and ordered him to show which was the *Mall*, and when was the *Room*. And then Capt. Read says, Major Basset was Commander in Chief, and that he ordered the Duty to be taken out with five Hands to take Capt. Mowbray. Indeed the *Prosecution* pleads he was under Constraint from his Men, and that it was contrary to his Inclination; but I think it not a sufficient one that is forced to have such Command. And as for what *John King* says in behalf of the Prisoner, that he had his Clearance for *St. Thomas*, in what he was accused of before, that he delivered his Men with a Notice of his going there for a Commission.

*Judge.* Gentlemen of the Jury, the Prisoner at the Bar hath been indicted for *Piracy*, committed on a Ship belonging to the *Capt. Peter Mowbray*, for taking and breaking the said Ship. The said *Indictment*, against *John*, through the great Affliction he seemed to have for him, was unwilling to speak the Truth, yet he cannot deny but he was at the taking of a *Revenue* Vessel, and personally by Capt. Mowbray, and that he had his Share. Then comes Capt. Mowbray, and he says Major Basset was Commander in Chief, and that he was brought before him, and gave his Papers in hand, and by his Order it was that the Goods were taken out. And then *John* says the *Revenue*, he for *Basset* was on board when the Goods were taken out. Then comes Capt. Read, and he says the Duty was taken out by Major Basset's Order, and that he had his Share brought into the *Revenue* to him. As he is *Prosecutor*, that the Men forced him against his Will it appears by the Evidence he did not set like a *Parson* under Constraint. And in the former Trial, I said of you remember, that his Men generally said, that he desired them under Pretence of not going to *St. Thomas*; and that he himself thought. So that I think the Evidence have proved the Fact upon him. But I shall leave this to your Consideration.

*(Then an Oath was sworn to by the Jury.)*

Who after they had considered of the *Facts*, returned, and found the

observed *St. Thomas* also *Edward* also *Thomas*, *Guilty*.

Then the Court adjourned till *Friday Morning*.

*Friday, November the 11th, 1748.* The Court met according to Adjournment.

THEN the Court proceeded on the Trial of *St. Thomas* also *Edward* also *Thomas*, upon the several Indictment for *Piracy* and *fraud* in taking the Ship *Revenue*, with her Goods, Capt. *Thomas* Read Commander.

To which Indictment upon her Arrangement he pleaded *Not Guilty*; but now denied her, to which we in *Pro*, and *plea* *Guilty*.

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and Council or Attorney, it was ordered in the Name of the Chancery, that Lord Chief Baron, and the rest of the Barons of his Court of Exchequer in Ireland, that the Injunction of this Court heretofore made, directed to the said High Sheriff, and to the said respective Tenants of the Lands in Question, require them, of them, jointly to return to the said Lord Chief Baron, the said Tenants and Lands of Link Rath, Ballymore, Derry, Managh, and others in the County of Kildare; and the said Lands of Managh impaled to be comprehended in the said Order.

The said Injunction was ordered to be served upon the said Persons and Estates attending the said Court, or by any other Person or Persons, at or upon the said Managh, or his Agent should appoint; the said Managh depley, or his Agent, was thereby required to have Names of the several and respective Tenants of the said Lands in the said Office, in order to be inserted in the said Injunction. And also ordered, that the Rents of the said Lands remaining in the several Estates made from the Time the said High Sheriff was put in Possession, should be forthwith by them paid over to the said Managh depley, and that a Copy of the said Order should be served upon the said several Tenants of the said Lands, together with the said Injunction: That by the Order of the Barons of the Court of Great Britain, the Barons were only directed to oblige the said Sheriff to account before them upon Oath, for the Rents of the said Lands received by him since his gaining the Possession thereof; which he was to pay to Managh depley, without Frequency, in Cash or in Apple.

That pursuant to the said Order of the 6th of February, an Injunction was put out of the said Court, signed by Jeffery Gilbert, Esq. Lord Chief Baron of the said Court, directed to the said High Sheriff, and Twenty-one Persons or Persons, to the said Lands. That the said High Sheriff was never served with the said Injunction or Order; notwithstanding which, he was clandestinely dispossessed of the said Lands about the 20th of February last, by the Attorneys of the Tenants, except a small Part thereof in the Possession of Dennis Gibbons.

That upon an Affidavit made by Richard Lewis, in a Cause of *Managh depley* vs. *St. John's*, before Justice Mr. Baron St. John, the 2d of February last, and upon a Motion of said Lewis, an Attachment to the Parliament was returned. On which by the said Court, against said Dennis Gibbons, Justice ordered the said Injunctions, though so such Person was named in the said Writ of Injunction.

The said Lands Committed have since the Oath administered to the Barons of the Exchequer, had before them by Mr. Hanley Macdonald, Deputy of the Crown in the High Court of Chancery, and in as follows, viz.

**Y**e shall force, That with and truly ye shall serve the King in the Office of Baron of his Exchequer; and that truly ye shall Charge and Discharge all manner of People; as well the Poor as Rich, and that ye shall be not for Riches, nor for Harred, nor for the Estate of no Person or Person or Person, nor for any good Deed, Gift nor Possession of any Person the which is made to you, nor by Craft nor by Engine, nor shall Lett the King's Right, nor in no other Person Right ye shall Disturb, Lett nor Rejoice ye shall the Laws of the Land, nor the King's Order ye shall put in. Reigns where that they may possibly be Loved, and that the King's Needs ye shall place before all other, and that for Gifts, Wages, no good Deed ye shall Layne, Disturb nor Lett the Profit and Reasonable Advantage of the King, in the Advantage of any other Person nor of yourself; And that nothing ye shall take of any Person for to do Wrong or Right or Deliver, or for to Deliver or to Delay the People which that have to do afore you, so as he shall as ye may them possibly to Deliver without Hurt of the King, and having no regard to any Profit, that might thereof to you be thereby, ye shall make to be delivered: And whereas ye may know any Wrong or Profit to be done to the King, ye shall put and do all your Power and Diligence that to Redress, and if ye may not do it, ye shall tell it to the King, or to them of his Council, which may make Relation to the King if ye may not come to him, to the King's Majesty's Lieutenant, or other Chief Governor or Governour of this Realm for the time being, and that the King's Council ye shall keep and Layne in all things, as God you help, and by the Contents of this Book.

The Committee humbly take leave to observe to your Lordships, that there is no Name of any Attorney in the said Injunction.

Which full Report being read, the House agreed to the same, and came to the following Resolutions.

**R**ESOLVED on the Question, That Alexander Barrington, Esq. late High Sheriff of the County of Kildare, has fully proved the Allegations in his Petition, to the Satisfaction of the House.

**R**esolved on the Question, That the said Alexander Barrington, Esq. late High Sheriff of the County of Kildare, in not obeying the Injunctions sent forth out of his Majesty's Court of Exchequer, dated the 22d of February, 1717, in the Cause between *Sherlock* and *Managh*, has behaved ill with Integrity and Courage, and with due Respect to the Orders and Resolutions of this House.

**R**esolved on the Question, That the Fines imposed upon Alexander Barrington, Esq. by the Court of Exchequer, for not entering on his Accounts, amounting to 77 l. for not returning the Writ of Injunction in the Cause between *Sherlock* and *Managh*, be paid off without Fees.

**R**esolved on the Question, That the Fines imposed upon Alexander Barrington, Esq. by the Court of Exchequer, for not entering on his Accounts, amounting to 1200 l. and upwards, be taken off, when he shall have made a full Account, without other Fees than such as are usual on paying such Accounts.

**R**esolved on the Question, That the Lord Chief Baron, and the other Barons of the Court of Exchequer, had due Notice of the Resolutions of the House, made the 10th of February 1719, in the Cause of the Earl of West, and Lord West, before they made an Order for an Injunction to Alexander depley into Possession.

Vox. VI.

**R**esolved on the Question, That the Lord Chief Baron, and the other Barons of the Court of Exchequer, had due Notice of the Order of this House of the 31st of October, 1717, in the Cause of *Sherlock* and *Managh*.

**R**esolved on the Question, That Jeffery Gilbert, Esq. Lord Chief Baron of his Majesty's Court of Exchequer, in the Proceedings in the Cause between *Sherlock* and *Managh*, as also against Alexander Barrington, Esq. late High Sheriff of the County of Kildare, has acted in direct Violation of the Orders and Resolutions of this House.

**R**esolved on the Question, That Jeffery Gilbert, Esq. Lord Chief Baron of his Majesty's Court of Exchequer, in the Proceedings in the Cause between *Sherlock* and *Managh*, as also against Alexander Barrington, Esq. late High Sheriff of the County of Kildare, has acted in manifest Derogation to, and Diminution of, the King's Prerogative of finally Judging in his High Court of Parliament in Ireland, as also of the Rights and Privileges of this Kingdom, and the Parliament thereof.

**R**esolved on the Question, That John Pennington, Esq. one of the Barons of his Majesty's Court of Exchequer, in the Proceedings in the Cause between *Sherlock* and *Managh*, as also against Alexander Barrington, Esq. late High Sheriff of the County of Kildare, has acted in direct Violation of the Orders and Resolutions of this House.

**R**esolved on the Question, That John Pennington, Esq. one of the Barons of his Majesty's Court of Exchequer, in the Proceedings in the Cause between *Sherlock* and *Managh*, as also against Alexander Barrington, Esq. late High Sheriff of the County of Kildare, has acted in manifest Derogation to, and Diminution of, the King's Prerogative of finally Judging in his High Court of Parliament as *Judex*, as also of the Rights and Privileges of this Kingdom, and the Parliament thereof.

**R**esolved on the Question, That Sir John St. John, Knt. one of the Barons of his Majesty's Court of Exchequer, in the Proceedings in the Cause between *Sherlock* and *Managh*, as also against Alexander Barrington, Esq. late High Sheriff of the County of Kildare, has acted in direct Violation of the Orders and Resolutions of this House.

**R**esolved on the Question, That Sir John St. John, Knt. one of the Barons of his Majesty's Court of Exchequer, in the Proceedings in the Cause between *Sherlock* and *Managh*, as also against Alexander Barrington, Esq. late High Sheriff of the County of Kildare, has acted in manifest Derogation to, and Diminution of, the King's Prerogative of finally Judging in his High Court of Parliament in Ireland, as also of the Rights and Privileges of this Kingdom, and the Parliament thereof.

**R**esolved on the Question, *Ann. Gen.* That it is the Duty of the Barons of the Exchequer, where there is any Wrong or Prejudice done to the King, in Matters lying before them, to advise the King, or the Chief Governor, or Governours of this Kingdom, or the Council.

**R**esolved on the Question, That the Case of *Sherlock* and *Managh*, as it lately lay before the Barons of the Exchequer, being Matter not only of Law, but of State, ought to have been laid before the King, the Chief Governor or Governours of this Kingdom, or the Council of the same. It is merely concerning his Majesty's Prerogative, and the Interest of the whole Kingdom.

**T**he Motion, *Disputed.*  
William Kildare, *Disputed.*  
Henry Kildare and Ashbury, *Medius, Cant.*  
Time, Kildare and Ashbury, *Wm. Derry.*

**R**esolved on the Question, That Jeffery Gilbert, Esq. Lord Chief Baron of the Court of Exchequer, John Pennington, Esq. and Sir John St. John, Knt. Barons of the same, in their Proceedings in the Cause between *Sherlock* and *Managh*, and against Alexander Barrington, Esq. late Sheriff of the County of Kildare, have acted contrary to Law, and to the established Practice of the King's Courts.

**T**he Motion, *Disputed.*  
William Kildare, *Disputed.*  
Henry Kildare and Ashbury, *Medius, Cant.*  
Time, Kildare and Ashbury, *Wm. Derry.*

**R**esolved on the Question, That Jeffery Gilbert, Esq. Lord Chief Baron of the Court of Exchequer, having taken upon him to put in Execution a pretended Order from another Court, contrary to the final Judgment of this High Court of Parliament, in the Cause between *Sherlock* and *Managh*, is a Barren of his Majesty's Prerogative, and the undoubted ancient Rights and Privileges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

**T**he Motion, *Disputed.*  
William Kildare, *Disputed.*  
Henry Kildare and Ashbury, *Medius, Cant.*  
Time, Kildare and Ashbury, *Wm. Derry.*

**R**esolved on the Question, That John Pennington, Esq. Second Baron of the Court of Exchequer, having taken upon him to put in Execution a pretended Order from another Court, contrary to the final Judgment of this High Court of Parliament, in the Cause between *Sherlock* and *Managh*, is a Barren of his Majesty's Prerogative, and the undoubted ancient Rights and Privileges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

**T**he Motion, *Disputed.*  
William Kildare, *Disputed.*  
Henry Kildare and Ashbury, *Medius, Cant.*  
Time, Kildare and Ashbury, *Wm. Derry.*

**R**esolved on the Question, That Sir John St. John, Knt. Third Baron of the Court of Exchequer, having taken upon him to put in Execution a pretended Order from another Court, contrary to the final Judgment of this High Court of Parliament, in the Cause between *Sherlock* and *Managh*, is a Barren of his Majesty's Prerogative, and the undoubted ancient Rights and Privileges of this House, and of the Rights and Liberties of the Subjects of this Kingdom.

C c *Disputed.*















Heard, I went to the Water-side, and find there some time, and the Lad running out of the House, and crying *Fire, Murder*, I run up, and run to the Door, and when I was about half way up Stairs, *Lord*, lay the Boy, *say any words to my Sister*, I run to the Stair-head and heard the Pistol go off, and then said to the Boy, in these words *My Sister! Then I opened the Door, and went in, and met *Rogers* with his Sword drawn in his Hand, and as he was going in at the Back.*

*Mr. Serj. Glynn.* Where was Captain Lutterell?  
*Witness.* Laid down on the Floor, all in his Gore; when I came into the Room the young Man followed me in I saw one Pistol lay upon the Table; *Traverse* was behind *Rogers*, *Rogers* was putting his Sword into his scabbard, and it stuck; and as I came in *Traverse* showed me his Hand, and said, See how I am used; *Rogers* was opening the Door, I took hold of him and said, you must go no further, here is Murder done, then the Captain's Sword was in the Middle of the Room broke, he lay on his Right side with his Arm on the Chair.

*Mr. Serj. Glynn.* How far was the Table off?  
*Witness.* The whole Breadth of the Room; he lay just before the Fire-place, I saw but one Pistol; I came in when the last Pistol went off, and I met *Mr. Rogers*, and put him by with my Hand, to come into the Room.  
*Traverse.* What Word did you say to me here?  
*Witness.* No more than in your Hand; he showed me his Hand.  
*L. C. J.* Did it appear to you upon looking on his Hand, that he had wounded in his Hand?

*Witness.* Yes, my Lord, I believe he was wounded, because he showed me his Hand, and it was bloody.  
*Traverse.* Was my Hand broke too—*Witness.* I did not feel that.  
*L. C. J.* When you came into the Room you saw but one Pistol?  
*Witness.* I saw but one, and that upon the Table, just as I came into the Room.

*L. C. J.* How far from Mr. Lutterell was it?  
*Witness.* I believe three Yards.  
*L. C. J.* How far from the Prisoner, or either of them?  
*Witness.* Five or Six Feet from the Table, as I came into the Room.  
*L. C. J.* Was the Sword in the Scabbard that was broke?  
*Witness.* It was out, and please you, my Lord.  
*L. C. J.* Whole Sword was it?  
*Witness.* It must be the Decade's, because the other had his Sword with him in his Hand drawn. I saw the Blood; I desired the Constable to draw the Sword, and I saw it bloody a good way.

[*Mr. Peters* *swears*.]  
*Mr. Serj. Glynn.* *Mr. Peters*, will you say my Lord and the Jury, whether on the 17th of October last you was first here, and by whom?  
*Mr. Peters.* On the 17th of October last, I think it was in the Forenoon, about 12 o'clock, I was first to see Mr. Lutterell, the Messenger told me he lay expiring; I came into his Room, where I found him on his Bed, in a wounded Condition, and languishing of his Wounds; he said he desired, that I would pray to Almighty God for his Soul, for he believed he had but a little time to continue in this World, and therefore he desired to make the best Use of it, I was ready to assist him, and desired him to consider how far he might be instrumental in bringing this Misfortune on himself. I desired him to consider, that as a dying Man such Words would be laid on his Words, therefore if he said any thing not strictly true, he might involve innocent People in the Guilt, and the Punishment; Therefore I desired him to lay his Hand upon his Heart and consider.

He said me, *As a dying Man, as he expected to be tried for this very Fact at the Bar of Heaven, as well as the Person who had said he was, he desired me to be murdered in a harkman manner.* Afterwards came in one Church, a Baptist in the same Surcoat, and desired me to put a horse to him; I did it upon which he made the same Answer, *That he was his harkman murderer*, I desired Spirit, or would have expressed himself more fully: On this I pray'd by him, and when I had done, I took my leave of him. In about an Hour afterwards I was sent for again; when I came there, I met Mr. *Peters* and Mr. *Hopins*, Judges of the Peace; out of the Judges gave Mr. Lutterell his Oath, and there being no Clock there, desired me to take his Words in Writing, which I did; the Words were these, *The Blessings and the Pains from my Father, they first then raised, the first Man drew his Sword, and ran me into the Body with his Sword; and then drew his Sword, which I broke in his Hand, and beg'd for Life; I neither fired a Pistol nor made one Pistol, they both ran through; I offer'd to pay them the Money. I think that are the very Words he said.* After this I pray'd by him again, and still desired, that he would not lay any thing to the Charge of People that were not guilty: He then then, and came again a third Time, and as I was praying by him, he interrupted me, and said me, if I was not proper to receive the Holy Sacrament, which he was desirous to do: I said him, if ever he had received the Sacrament; he told me he had; I desired him to consider, and to assist him I put him into a Bedstead; I did also one Thing which was necessary, which perhaps he might come to with Reluctance, and that was Charity and forgiving his Enemies. I told him he had but hardly dealt with I believed, yet it did behave him, as he did a Christian, to forgive them; he told me he did forgive them, and he beg'd Almighty God at the last Day would forgive their Iniquities; he did these three afterwards, but then in so desiring a Confession, that I could not attend him to any Purpose.

*Mr. Hengford.* Did he say any thing about who fired the Pistol?  
*Mr. Peters.* I mentioned it to him; when I shew'd him, if he had fired either of the Pistols, I told him one of the Pistols was wounded, and that there were two Balls taken out of his Hand; he assured me, as he was a dying Man, he fired neither of the Pistols.  
*Rogers.* Did not he confess that he had broke one of these Heads?  
*Mr. Peters.* No, he did not say he broke one of their Heads, nor any thing like it; so far from that, that he said he did not design to hurt a Hair of their Heads.  
*L. C. J.* I think, Mr. *Peters*, you say, when you came there you met with two Justices of the Peace, Mr. *Peters* and Mr. *Hopins*, and because they had no Clock there, they desired you to take the Examination.

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*Mr. Peters.* Yes, my Lord, I did take it.  
*Mr. Serj. Glynn.* My Lord, I apprehended we had it ready to produce, or else I had not opened it; but upon my calling for it, I am told, to my Surprise, that Mr. *Peters* hath it, and he is gone into the County.  
*Mr. Peters.* I have a Copy of it.  
*L. C. J.* We must have the Original.  
*Mr. Peters.* My Lord, there is a Copy of it in my Deposition before the Coroner.  
*L. C. J.* Is Mr. *Hopins* here?

[*Mr. Haynes called.*]  
*L. C. J.* You have given an Account of the Examination of this Gentleman, first before the Clergyman, afterwards before two Justices of the Peace, the Examination is taken and reduced into Writing, and if it was reduced into Writing, by the Rule of Law, unless you show you are disabled to do it by some Accident or other, you must produce that Writing.  
*Mr. Rogers.* I am very much surpris'd, I apprehended they had the Writing ready in Court to produce. My Lord, Mr. *Hopins* will inform you.

[*Mr. Haynes sworn.*]  
*L. C. J.* Mr. *Hopins*, we have been inform'd by that Gentleman that finds before you, the Minister, that upon hearing of this unhappy Accident, you and one of your Brethren, Mr. *Peters*, came there in order to inquire into the Matter, and take the Examination of the Prisoners; did you do it?

*Mr. Hopins.* My Lord, on the 17th of October last, the Prisoners at the Bar were brought before me, and charged with the Murder of Mr. Lutterell; I understood Mr. Lutterell was not actually dead, for Mr. *Peters*, another Justice of the Peace, went with me to Mr. Lutterell's Lodging, and there we found him in a very weak Condition, but sensible; we administered the Oath, in order to take the Information in Form; Mr. *Peters* and the Minister were there; my Hearing not being good, Mr. *Peters* examined him, but before they could perfect his Examination in form he fainted away, and could not go on; then we went to my House, where the Prisoners were, and examined them, and afterwards committed them. What the Decade's said to Mr. *Peters* and the Minister I did not hear, so can give no Account of it.

*Mr. Rogers.* Had you a Paper taken?  
*Mr. Hopins.* There was a Paper taken, but it was imperfect.  
*Mr. Rogers.* And I think that is not in your Custody, but you the Paper?  
*Mr. Hopins.* No, I had it not.  
*Mr. Rogers.* Do you know where it is?—*Mr. Hopins.* No, I do not.  
*Mr. Peters.* I gave it to Mr. *Peters*, and obtained it of him to shew the Coroner, and afterwards I gave it him again; I took a Copy of it.

*L. C. J.* The Copy you took is from the Paper produced to the Coroner.

*Mr. Rogers.* You was examined before the Coroner?  
*Mr. Peters.* I brought the Original Paper to the Coroner.  
*Mr. Rogers.* Whether that, which is mention'd in your Affidavit before the Coroner, was a Copy from the Original Paper?—*Mr. Peters.* Yes.  
*Mr. Rogers.* And did you examine it?—*Mr. Peters.* Yes.

*L. C. J.* We will have the Original.  
*Mr. Hengford.* We hope we may have Liberty to read the Deposition taken before the Coroner, if what the Gentleman says be so; he saw the Examination taken in the Presence of the Justices of the Peace, and the very Paper, the Words of the Paper, are contained in the Deposition taken before the Coroner.

*L. C. J.* That won't do, you have not the Examination of the Decade's. This is all done of Mr. *Peters*, he ought to have taken Care, and attended here, and had the Examination before the Court, and without that we can't arrive at the Truth of this Case; I doubt you must lay aside all the Evidence of this Gentleman for want of the original Examination.

*Mr. Rogers.* We must submit it to your Lordship, as to the Confession, that Part of it that is not contained in the Examination, which was not proposed to him at the Time of his Examination, whether that is not Evidence; there are two or three Things he gives an Account of, that he did before it was reduced into Writing. But suppose we can't have the Benefit of the Examination, yet the Discourse that was said with the Decade's at another Time, whether we may not be admitted to give that in Evidence, we must submit it to your Lordship. But suppose no Examination had been taken, we hardly apprehend what he did would be proper on lay before the Jury. Therefore when he gives an Account of what he said at another Time than that of his Examination, though we can't produce what he said at the Time of his Examination, yet we may give in Evidence what he said at other Times. There were two other Times which he gives an Account of; the first was, when he was first sent for to pray by him, and one Church came in; he then declared on the Words of a dying Man, *He was harkman murdered.*

*L. C. J.* You know on the Court of Chancery, when the Party is examined on his Oath, he gives in a full Answer, and on Examinations taken to us, he gives in a full Answer, and so a third; all these are taken but as one Answer and entire Confession of the Party.

*Mr. Rogers.* Here is not an Examination before a proper Officer.  
*L. C. J.* You are to be heard no more to it, because you ought to have produced it.

*Mr. Rogers.* I am sure it is a Surprise on all of us.  
*Mr. Hengford.* As to us, we have the very Confession in our Brief, and I believe, if we had thought it could not have been produced, we should not have opened it.

*L. C. J.* And there is too an Examination in Print; that ought not to be, and the Person that did it ought to be censured; Mr. *Juries* to be proposed; here is a printed Pamphlet, whence the Title is, *Mr. Lutterell's Cry for Justice.*

*Mr. Hengford.* I never saw it, but am told it is most in Favour of the Prisoners at the Bar.

*L. C. J.* If the Examination is true, it ought to be produced, and the Prisoners ought to come fairly to their Trial, and, if guilty, God

judged



forbid but they should suffer, but not by passionate Informations in Print; and it is an unprecedented Thing, and if it comes out who did it, I shall take a Course with them: It is a way of preventing all Manner of Justice.

Mr. *Hangerford*. No doubt it is a very unjust Thing, and unwarrantable, so more to be justified, than Officers are, when, under the Colour of Justice, they shall treat a Gentleman at his own Lodging: but as to the Case in *Chancery*, first, second, and third Answers are but one Answer. I speak it with all Difference, whether that be the same Case, the Words that he did deliver at other Times, when the Justices were not present, when he was a strong Person on the Bench of Exonity, and then told the same Words; and now this Paper can't be produced, whether the Words of the Paper may not be admitted as Evidence, we humbly submit it to your Lordship; and we believe the Witnesses will give you an Account of what he said at other Periods of Time, when there was no Examination in Writing, which was only when the Justices attended.

L. C. J. Give an Account how it comes to pass, that you have not this Examination to produce, that was in Writing?

[Mr. *Mindell* forces.]

Mr. *Rose*. Will you give in Account of this Paper, and whether there have been any Application made to get it, and why it is not here?

Mr. *Mindell*. I called at Mr. *Peters*'s, but they told me he was gone into the Country, and he had not fixed any one Place, which he not doing, they did not know where to find him.

L. C. J. Here is a printed Narrative goes about the Town. Do you know who was the Author of that?

Mr. *Mindell*. No, my Lord, we have been enquiring in order to prosecute the Person; I have asked the Widow, and Mr. *Ant* her Nephew, and they say, they know nothing of it.

Mr. *Hangerford*. It fits out with this Fact, that the Decade struck first; and if so, it is very reasonable to suppose, that this Paper was done rather in Favour of the Prisoner at the Bar, than of the Prosecution.

L. C. J. The Justice of Peace that had not the Examination doth appear, but he that hath it is out of the Way. Mr. *Peters*, how many Times was you with the Decade?

Mr. *Peters*. Three Times, at 12 o'Clock, about an Hour after, and about an Hour after that, the third Time.

L. C. J. When was it you reduced what he said into Writing?

Mr. *Peters*. The second Time; the third Time I submitted the Sacrament.

L. C. J. And when you examined him the first Time, and afterwards a second and third Time, the Design of that was to perfect the Examination which you took the first Time, and then it is all of a piece.

Mr. *Hangerford*. My Lord, the third Examination was after the taking any thing in Writing; when he took the Sacrament on the solemn Occasion, he declared, &c.

Mr. *J. Povey*. The last examination, therefore, was an Advice to a forgiving Temper.

Mr. *J. Eyre*. Mr. *Peters* should declare what he said the first and third Time.

Mr. *Peters*. I prevail'd on to consider and recollect whether what he had said was true; he said it was.

Mr. *J. Eyre*. What did he say the first Time?

Mr. *Peters*. The first Time he told me, he was *barbarously murdered*: As I told you before, there came in one *George* a Bailiff, and then I put him to consider, whether he was not Accus'd by his own Misfortune; to which he returned the same Answer, *That he was barbarously murdered, that he did not know his Name, nor his Place*.

L. C. J. Did you ask him about any Blow, or Provocation given?

Mr. *Peters*. I did him, to which he said, *He did not desire to touch a Hair of their Heads*.

L. C. J. I must confess, for my Part, I am not entirely satisfied: Mr. *Peters* at his first coming examined him, and after that he comes to him a second time, and then he is examined in the Presence of two Justices of the Peace, and by their Authority; and he says the Incent of that was to perfect the first Examination; and being so examined a second time, his Examination is taken in Writing; whether or no the first and second do not make an entire Examination, and so that you can't produce the first without the second; I make no doubt it might be produced, if there had not been a second; but he that examines him first, examines him afterwards a second time, in order to perfect that Examination, and when he doth it, it is reduced into Writing; to me it seems a Matter of great Consequence, if the first is allowed without producing the second.

Mr. *J. Eyre*. It can't properly be called an Examination.

Mr. *Hangerford*. The first time he examined him as a Christian, as a Minister; as to the second Examination, Mr. *Peters* had no more to do in it than a Justice's Clerk.

L. C. J. The Examination taken before the Justice, was to confirm the former Examination, and upon that Examination all was reduced into Writing.

Mr. *J. Eyre*. That which is set down in Writing, if it be an Examination taken in Writing of a Prisoner before a Justice of the Peace, you can't give Evidence of that Examination viv'd vos, unless the Examination be lost; but what Declaration or Confession was made at any other time, may be given in Evidence; the particular Examination of what he said before the Justices, and was reduced into Writing, cannot be pieced but by that Writing; but as to what he said at any other Time, the first and third Time, and not before the Magistrate, that may be given in Evidence.

Mr. *J. Povey*. The great Matter I observe is, that Mr. *Peters* did say, he did look upon the second Examination to perfect the first, the first was not so perfect, and there it was to be ascertained by a second, and which they not coming to trial to their Memory put into Writing; that Writing indeed the Justice of Peace hath; it is not produced, but if it be agreed that it was put into Writing, and after it was reduced into Writing, it seemed to be all of a piece, so as plainly to relate to what was done the Time before, how will they afterwards the whole, but by producing the

Writing? Then this writing can't be seen, the Justice of Peace hath it, and doth not come here to produce it.

Mr. *J. Eyre*. I don't know how to call this perfecting the former Examination, you can't call the Discourse between him and Mr. *Peters* an Examination, when there was no Justice of Peace present; it is an Examination what pass'd between Mr. *Peters* and this Gentleman. It always takes its rise at the *Old Bailey*, where Justice is allowed to be given; and what was said by People at other times besides the time of Examination.

Mr. *J. Povey*. What doth Mr. *Peters* mean by perfecting the Examination?

Mr. *Peters*. I beg your Pardon, it was not my Word.

L. C. J. Not to differ about Words, whether this is an Examination before the Minister, when the Justices of Peace was not there; it is likely this Minister came to inquire of this Gentleman about the Circumstances of his Death; after that, the same Gentleman is present when the Justice of Peace comes; thereupon the Justice of Peace deliver him to be taken in Writing; he asks the Last Questions at he did before, and they are taken in Writing; he takes it, desiring to make the first Examination more authentic to charge the Person that gives the Examination. Naturally, when all this is done, the Examination of him before the Justice taken in Writing by the first Person that required of him before, and this done in order to perfect and confirm the Examination, when you will not take them both together as one entire Account given by Decade? He gives the Account, he gives it as true in the Presence of the Justice; they were not present the first time, but the same Person asked him the first time, he asks him when the Justice were there, if it be said before was true, and on that an Account is taken in Writing.

upon this, when there is an Examination in Writing in the Presence of the first Person, and when they give you an reasonable Excuse why it can't be produced, it is thought to be the best Credit given to them.

Mr. *J. Eyre*. I think there is the best Credit given, because the Examination is not produced; however it is Evidence.

Mr. *J. Povey*. If they were both of equal Validity you say something, but it is collected on all Hands, that the second Examination was not solemn and valid, because two Justices of the Peace were present, and there was the Ave of Magistralty over the Person; and the second Examination relates to the first.

Mr. *J. Povey*. It is a hard Case on the Prisoner at the Bar; it is a Confession of Mr. *Lattrell*, and if they had said in Evidence, they might be compared together; but they not having that, as to the Prisoner's Law, they cannot give it in Evidence: It is a great Hardship, but when I cannot tell, I think it ought to be confined as a proper Time.

Mr. *J. Eyre*. I think it ought to be confined as a proper Time, to most material of what is said by word of Mouth is detained from us, it is not produced; but I think we should allow what was said at other times to be given in Evidence, because the first is no Examination, because the Justice of Peace then present; so that the Examination stands distinctly by itself, and that Evidence is to be laid and not produced; but this we will allow that to be Evidence which he said at other times, because he had an Examination taken in Writing: Therefore we shall best to only Evidence, the first was no Examination, only what Mr. *Peters* will say upon him to say pallid between them.

L. C. J. Go on with your Evidence.

Mr. *Hangerford*. There can be no doubt of the third Declaration; my Lord, the third Examination was certainly the most honest Examination, as to the second Examination, it had the Solemnity of two Justices of the Peace, one happens to be dead, the other to be absent; whether what a Man says just as he is going to die, and on his receiving the Holy Sacrament, is not to be regarded.

Mr. *J. Eyre*. He should distinguish between what passed in the first Discourse, without any regard to what is contained in the second Examination.

Mr. *Rose*. Mr. *Peters*, you hear the Opinion of the Court, that was pallid at the Writing of this Paper you must not take any Notice of, he gave an Account of what pass'd at any other Time.

Mr. *Peters*. I told your Lordship before, I went first to visit him the first time, when I found him dangerously ill; when I had talked to him some time to put him in mind of Death, I desired to know of him, how far he had been any way influenced or seduced to bring this Declaration upon himself; he said, *As by what a dying Man, and expell'd to be judg'd at the last Day, they murdered him barbarously*. I requested him to look again at the Request of Mr. *Chubb* a Bailiff, and the last time I came to him, when he received the Sacrament.

L. C. J. Mr. *Peters*, I desire you to consider with yourself, Did you not ask him whether he had struck any of the Bailiffs?

Mr. *Peters*. I did not.

L. C. J. Did you ask him if he had given them any Provocation.

Mr. *Peters*. I did; to which he answered, *He had given them no Provocation*.

L. C. J. Did you ask him gave the first Blow?

Mr. *Peters*. No, I did not.

L. C. J. Did he lay the Wound? did he say he gave that?

Mr. *Peters*. I told him, it appear'd one of the Bailiffs was wounded in the Hand, and it is probable he was the Person that discharged that Pistol upon which he accused me, *He fired neither of the Pistols; he neither drew his Sword, nor fired either of the Pistols*.

L. C. J. What you had this Discourse with him, did you reduce it into Writing?

Mr. *Peters*. What I reduced into Writing, was only my Deposition, which I write with my own Hand, and which Mr. Justice *Harper* swore me to, and I believe he hath it in his Callosity.

L. C. J. Here this Gentleman is allowed to give an Account of what Discourse pass'd between him and Mr. *Lattrell* the first time; the Justice of Peace can't be allowed to give an Account of what is not at his own Examination, because it was reduced into Writing, and that which can't be produced.

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Mr. Rose



Mr. Rouse. I beg you would give an Account of what he said at any other Time, when this Paper was not written: when you talked with him about this Matter, you say he said, 'The Butcher did barbarously murder him without any Provocation;' that he said, 'He gave them no Provocation.' And when you asked him about the Wound that one of the Pillows had, he said, 'His first neither of the Pillows, nor drew his Sword;' I desire to know at any other Time, whether there was any Thing material said between you at any other Time than at that Time when the Paper was written: Can you recollect it?

L. C. J. You described him three Times, the first you have given an Account of, the second Time it was reduced into Writing, that Writing does not appear; what passed the third Time, pray repeat it again?

Mr. Peters. As he was going to receive the Holy Sacrament, I begged of him to consider whether what he had said was true: he said, 'Every Article he had said, as he was a dying Man, and as he hoped to receive mercy by the Sacrament, every Thing he had said was truly true.'

Mr. Rouse. We shall trouble your Lordship with one Evidence more, and in the Sergeant, who will give you an Account of his Wounds.

[Mr. Sparham swears.]

Mr. Rouse. I think you was first for a Surgeon; give an Account in what Condition you found the Deceased, how many Wounds, and of what Nature?

Mr. Sparham. I found him labouring with a Wound under the right Pap with a Sheet; upon this I examined him, and putting him into a proper Posture, found several other Wounds; one near the Lower, the lower Part of the eighth Rib, near the Back-bone, several other Wounds with a Sword, three or four on his Belly. Upon opening of his Body I found that the Wound with the Bullet had penetrated about nine Inches towards the Back, which Wound was mortal, the first to be of the Lung, having a Hole through, and the second to be torn, and the *Diaphragma* wounded: I found one other Wound with a Sword near the eighth Rib, three Inches and a half broad, penetrating the *Thorax*, and wounding the *Diaphragma*, which was also mortal: I found eight other Wounds with a Sword about a Quarter of an Inch wide each, and a Quarter of an Inch deep, one near the left Pap, four others on the right Side of the Belly, two more on each side the Back-bone.

Mr. Rouse. So you found seven two of the Wounds to be mortal, one wounded with the Pistol-shot.

Mr. Sparham. Yes, I saw two leaden Pieces taken out of his Body.

Mr. Rouse. Who attended at the last Time?

Mr. Sparham. Mr. Gifford.

Interrog. Did he or you take out those Bullets?

Mr. Sparham. We both took them out, I think.

Mr. Rouse. My Lord, we have done.

L. C. J. What say the Prisoners? The Counsel for the King have said what Witnesses they think proper, it is now your Time to answer the Accusation.

Regis. If your Lordship please, we arrested the Gentleman in *Surrey-street*, and he desired me to go to his Lodging, when we came there, he told me he would pay the Money; says he, 'Go and see for the Attorney, and I will pay the Money;' upon that *Tranter* went to the Attorney for his Bill; I went up Stairs with the Gentleman into the Dining-room, when he came up, says he, 'My Dear, I am arrested, it is for Mr. Rouse's Bill.' He began to look a little angry: with that he went to his Scrutiny and sent something out of it, a Key, and he went up Stairs and fetched his Trunk, and when he came down again, he clasped me to his Breast, and then he shot me, I was terrified, he Laid me out of the Room, with that I gave him good Words; says he, 'Nonsense, I will let you live a little till your Partner comes back, and then I will find all your Souls to Hell together;' then the Foot-boy came back and said, the Gentleman was coming; he ordered the Boy out of the Room, and one knocked at the Door, who in the Boy was gone, he clasped his Pillows on one Side of his Bed, and the other on the other, and my Partner came, and when he came into the Room he gave him a Blow over the Head, with that he went in with him, and then one of the Pillows went off and wounded him; then he drew his Sword, and I drew mine, and then the other Pillows went off, which was the Occasion of his Death.

L. C. J. Have you any Witnesses?

[Mr. Twiss swears.]

Mr. Twiss. My Lord, I was employed by the Plaintiff, Mr. Carr, to take out a Writ against Mr. Lutterell, on an indebted Note; I did take out a Writ and gave it to Mr. Rouse, and he got the Warrant upon it, and afterwards came to me, and desired to know where Mr. Lutterell was, he told me, and that I would deliver him to him, whether young or old, he told me where to go to, and described him to me; then they went off and arrested him, and after he was arrested *Tranter* came to me, and told me something, they had taken the Captain: they said they took him in the lower End of *Surrey-street*, and that he was very angry, and said they had not used him civilly.

L. C. J. What *Tranter* did in that Evidence.

Mr. Twiss. I know no more, my Lord; *Tranter* came to me for this Bill, and I gave him a Bill of the Debt and Charges.

L. C. J. Did you give the Bill of the Debt and Charges to *Tranter*?

Mr. Twiss. I did; he told me they had just taken the Captain, and said give it him; the Bill of Charges was one Pound thirteen Shillings.

[Mr. Twiss swears. The Witness is him.]

Mr. Twiss. I put in the Warrant made out upon the Bill of Middlebury, in the Suit of Mr. Carr, to arrest the deceased; [The Warrant read, and the Bill of Middlebury produced and read.]

[Mr. Hickman swears, and the Warrant shown to him.]

Mr. Hickman. Thus I know to be my Hand, I made out this Warrant on it.

Mr. Hargreave. I would humbly offer it to your Lordship's Observation, here is a Fact we have omitted to prove; here is a Witness in Court, one *Lazar*, can prove that *Regis* that off the Pill.

L. C. J. It is irregular; but although you have omitted it, and come at it now, I would have the whole Fact, and if my Brothers please we hear it.

[Confession *Lazar* swears.]

Mr. Hargreave. Mrs. *Lazar*, What do you know of Shooting off the Pistol?

Conf. *Lazar*. I was opposite to the Captain's Lodging in *Surrey-street*, in a Room up two Pair of Stairs, and I heard a Pistol go off, upon that I went to the Window, and I saw a luffy fat Man take a Pistol out of the Window in the Captain's Lodging up two Pair of Stairs, and let it off towards the Fore-side.

Mr. Rouse. Do you know Mr. Lutterell?—Conf. *Lazar*. Yes.

Mr. Rouse. Can you take upon you to say it was not Mr. Lutterell?

Conf. *Lazar*. Yes, I am sure it was not he.

L. C. J. When you saw a luffy fat Man take a Pistol off from the Window, and discharge it, was any body by him at that Time?

Conf. *Lazar*. Nobody that I saw.

L. C. J. What sort of Man was Mr. Lutterell?

Conf. *Lazar*. He was a little Man.

One of the Jury. Was there any Light in that Room to distinguish one Man from another?

L. C. J. What the said was, he saw a luffy fat Man come to the Window, and take up a Pistol and discharge it, and that he saw nobody else at the Window.

Mr. Hargreave. The Coroner's Inquest came into this Room, and was satisfied, that from thence the night for into this Window.

[Mr. Gifford the Surgeon swears.]

Mr. Gifford. On Tuesday the 19th of October last, about ten or eleven o'Clock, I was sent for to a Gentleman, Mr. Lutterell; when I came to him, I found him sitting on a Chair, and he leaned back with his Shirt and Collar very bloody; Mr. Sparham was with him, in order to look to his Wound; we put him to bed, we found a Wound about an Inch below the right Pap, by Gun or Pistol shot, and we dressed it, and all the other Wounds we could find; I went into the Parlour, and there were the two Prisoners at the Bar; I was told one of them was wounded; upon that I went to examine into it; upon coming into the Parlour I examined *Tranter*, and there I found two Pieces of Bullets which were lodged in his Hand; we extracted the Bullets; I found a small Wound in his Wrist, and a Rupture on his Head; that was a small Wound which was on the Wrist, it seemed to be from a Pinch, something that had entered the Skin. I then I went to Mr. Lutterell again, as he was in a good State of Health; I asked Mr. Lutterell, 'Whether he had fired a Pistol?' I asked him several Times; he denied it a first, second and third Time, and he used this Expression, 'I call God to Witness, I neither drew a Pistol, nor drew my Sword, but was barbarously murdered.' I was there again, when Mr. Peters gave him the Sacrament, when he was asked the same Question; he then answered, 'He neither did the one or the other.' In the Afternoon Mr. Rouse and I went together, he was then in a calm State, seemed reasonable, and we asked him, 'Sir, you can give some Account of this Matter, your Reason and Judgment are strong, I have heard that you fetched down the Pillows?' He told me, 'He had, but with no malicious Design, only he would not be forced out of his Lodgings.' I asked him, 'If there was any Blow given?' He said, 'They had given him abusive Language, which induced him to strike one of them; upon that they immediately seized him, the luffy Man seized him and drew his Sword; he tumbled down, and he flung him; he often begged them to spare his Life, the other said, Damn him, draw his own Sword and fling him.' Mr. Lutterell's Finger and Thumb were cut, as if it was with grasping of a Sword. Then he said, 'The Seller of Man took a Pistol and clipped it close to his Breast, and shot him in the Back, and he fell by the Mouth of the Seller; I fell to his Head, and then it fell, which I the rather believe, because he had some Powder Spots or Marks on his Face.—Regis. He owned to you that he struck out of us.'

Mr. Gifford. Yes, but it was upon your giving away Language.

L. C. J. When you asked him about hitting down the Pillows, and upon what Account, what led he?

Mr. Gifford. He acknowledged he brought down the Pillows, but with no evil Intention, but as he was willing to pay his Debts, he was not willing to be forced out of his Lodging, and he ceased.

[Mr. Bonner swears.]

Mr. Bonner. My Lord, just as Mr. Lutterell was got to Bed I came up Stairs, and asked him, if he had fired the Pistol; he showed it, and said, 'He had no Design to do them any Harm, or make any Resistance, but (said he) they killed me cowardly and cruelly.'

Regis. Alas that he had declared to you that he had no Design to make any Resistance, what followed?

Bonner. When I came out of the Room, says Mr. Gifford to me, Mr. Bonner, Mr. *Tranter* is that in the Hand; it is certain Mr. Lutterell shot him in the Hand; therefore let us go back and ask him; we went and asked him both of us, and he said, 'No, as God should judge me, he did not fire; and he luffy Man drew the other Pistol to his Head, and then it fell, which I the rather believe, because he had some Powder Spots or Marks on his Face.—Regis. He owned to you that he struck out of us, and desired we would leave him.'

Regis. Please to take notice, that my Partner is that in the right Hand.

Tranter. My Lord, I have left the Use of my Thumb.

[Blake the Surgeon swears.]

Blake. My Lord, Mr. *Tranter* was wounded in the Thumb of the right Hand, and in his left he had a Wound here in his Wrist, I did not take the Ball out of his Head, but I dressed it.

L. C. J. What was that Blow on his Head? what do you think it was done with?—Mr. Blake. It seemed to be done with a Case.

L. C. J. Was it a Wound or a Bruise?

Mr. Blake. A Wound, the Skin was broke. Mr. Regis had a little Wound in one of his Fingers, which seemed to be done with the Point of a Sword.

[Thomas Hargreave called again.]

L. C. J. Hark you, young Man, hear the Question, and consider well; upon your first Examination you say, when *Tranter* knocked at the Door you went down to let him in; that *Tranter* made up to the Dining-Room, and you followed him; you heard a little Bulle before you came in; but he fell full Thing you say, when you came, was *Tranter* running your Master against the Closet Door, and *Regis* picking him with a Sword;



a Sword: I ask you this Question, whether or no, when you were going up Stairs under Tranter, before you entered the Room, you did not hear a Blow?

*The Harpison.* I heard a Blow, but did not know what it struck at. Mr. J. Esq. Did you go to whom the Blow was given?

*Harpison.* No, I saw nothing at all of it.

*L. C. J.* The Reason of my calling him again, was to be full fed as to this Particular, for the Coroner informs me, that before his, he had sworn to the first Effect, he suffered hardly before, but I believe not with any Design; he said he did not hear any Blow, his Meaning, then might be, tho' he did hear a Blow, yet not seeing who gave it, therefore he thought it not material; I did not believe he did it with any Design.

*L. C. J.* Have you any other Witnesses?

*Reason.* My Lord, we had none but ourselves, we are Officers of the Court; he assaulted us, and brought down his Pistols and struck them in his Belom.

*L. C. J.* Did he not afterwards take them out and lay them on the Table?

*Reason.* No, my Lord.

*Tranter.* While I was gone, I did not know what happened, but when I came back, the Minute I entered the Room he first put me over the Head with his Cane, and the Pistol went off, and shot me in the Hand.

[*The Clashes were produced, and by the Help of the Witness it appeared, that the Wound given by the Pistol under the Right Palm could not very properly be any Pistol of the Pistol in the Belom of the Defendant, by the Pistol going off of itself.*]

*Reason.* My Lord, we are Officers of the Court, and what we did was for our own Security.

*L. C. J.* What says Tranter?

*Tranter.* My Lord, we have no more to say.

*Mr. Serje.* My Lord, I beg leave to observe a few Things by way of Reply. They have endeavoured to differ the Case with respect to three Particulars; the first Particular is with relation to the Blow given by Mr. Lattrell; they say Mr. Lattrell himself being pressed very much, did own that he had given one of the Ballists a Blow on the Head; there appears Reason to think that to be true, because the Surgeon says he dressed him of a Wound received by a Blow in a Case; we debate it, whether that is a sufficient Justification of the Officer for what followed, to kill Mr. Lattrell in this manner. Supposing it to be true. We say the Boy says, he saw afterwards, immediately upon his coming into the Room, in an instant, as soon as he heard the Blow, he found Mr. Tranter starting him up against the Window, and the other Ballist flabbing him; he forces Mr. Lattrell had then no Sword or Stick in his Hand, so that whether or no, after the Ballist had received a Blow on his Head, it will be a justification sufficient for the Ballist to murder him. Another Part of the Evidence is in relation to the hanging down of the Pistols; I beg leave to observe, my Lord, he did catch that the Pistols were brought down, but not with an Intention to do any thing Precipitate; that he laid them on the Table; they don't ground Mr. Lattrell, find either of them, but in the Scourge, the Pistols were in his Hand, and there they went off of themselves. One Wounded the Prisoner, the other went into his own Breast. As to what is said with relation to the Intention of Mr. Lattrell, he did own he did threaten them. If he did, yet he had not Power over the Pistols, one was on the Table, and the other was in the Window, and they lay the Pistols were not fired by any of them: Our Witness, the Maid-Servant, just a Minute before the Pistols were fired off, saw Mr. Lattrell on the Ground upon his Back, and his Hands lifted up, and then flabbing him, and this before any one of the Pistols went off, there is another Witness swears expressly, he saw a fat Man take a Pistol out of the Window, and then the Chamberman, Mr. Lattrell was a fat Man, so it must be somebody else that fired the Pistols, and not Mr. Lattrell, in all probability. It was Mr. Reason, as to this Evidence given in relation to the Clashes, because here is a Hole in the Wall, the Pistol that was in his Breast must go off of itself, and make that Hole. It can be no such Thing, the Jury has seen the Clashes, and where the Wound is given, and in what Position Mr. Reason himself had attempted to place the Pistols, and it is impossible the Pistols should go off, and give that mortal Wound. We submit it to your Lordship's Discretion upon the whole, whether it is a sufficient Justification, though they are Officers of Justice, and ought to be protected, yet suppose that Mischance where there is no Necessity for it, they are not to be justified.

*L. C. J.* There will be two Points in Law; the one is, whether the Officers are to be justified in what they have done: If they have done nothing, but what was proper to secure the Prisoner, and their own Lives when they were assaulted, they are not guilty of Felony; and if they are guilty of Felony, then of what Degree, whether of Murder or Manslaughter.

*Mr. Serje.* My Lord, we shall submit it, whether a Manslaughter another over the Head be a Justification for him immediately to kill him, and take it with this Circumstance, that they had given him all Language.

*L. C. J.* It is ill Language, Justification for Blows? Believes you will consider, whether there was not ill Language on the other Side.

*Mr. Harpison.* My Lord, I won't take up much of your Lordship's Time, if your Lordship will spare me a Word or two. Here is a Man's Life taken away by two Persons, that had a Precept from a Court of Justice to arrest, the only thing they had to do, was to secure the Person, so make him answerable to Justice, whether that could not be done without this Outrage? Whether Officers of Justice may execute their Process with so much Cruelty? It amounts to as great premeditated Murder as can be conceived. There is a Malice contained in Cruelty; I need not mention the Matter; it hath been fully laid before you; I shall only mention a Precedent or two; one is that of *(a)* *Holloway's Case*: There was something of a Prosecution; but the Judge there in that Case did enter into the Fact, whether the Prosecution was sufficient to justify the killing of the Boy. The Boy was Wrestling Wood in his Park, and had a Rope about his mid-

dle, and as he was up in a Tree, he bid him come down out of the Tree, and he took hold of the Rope and dragged him up, that he was killed; and this was not a sufficient Prosecution. Another Case is that of *M. Ingride* (b); it is reported by my Lord Chief Justice Holt, that was a Prosecution, a Case had desired alongridge to go out of the Room, and then turned him out of the Room; and there the turning him out of the Room was not a sufficient Prosecution, and it is a very odd Observation of my Lord Chief Justice Holt; when *Cole* was a Case with so much Cruelty and Barbarity (as appears to be here, but was not Wounded), eight Judges that with the Pistol on the face Perfect, and certainly not fully Men as the Pistols as the Bar are, might have made him answerable to Justice without any such barbarous Treatment. The Observation my Lord Chief Justice Holt made is, that the Law should be so considered. As to the Business of the Clashes, it seemed to be absurd that the Pistol went off, and made that Wound on the Right Side; by no Position he could put the Pistols in, could their going off make that Wound.

*Mr. Serje.* My Lord, I would only observe two or three Things. If Mr. Lattrell, at the time they assaulted him with a Sword, had held his Pistols in his Hand, and then our Lives had been in danger, the Case had been different, but when he had put the Pistols out of his Hand, and they were between him and the Pistols, so that it was impossible for him to do these any such thing (for I admit if it was in Mr. Lattrell's Power at that Time, and he had had an Intention, that if they did not kill him, he would kill them, that might be something of a Justification), they are the less excusable in doing what they did. As to the Circumstance of the Pistols being of themselves, as they were in Mr. Lattrell's Belom, and if giving this Wound, it seems to be impossible it should be so, and that should be a Wound given by a Pistol levelled directly at him.

*L. C. J.* I think you mentioned the Case that is in *Kings*, and if I have read that Case lately, you will remember, that a Blow is a Prosecution, and if a Blow be said great, it will not be Murder, tho' Death do ensue upon it.

*L. C. J.* Gentlemen of the Jury, the Prisoners at the Bar, *High Reason* and *Robert Tranter*, are charged by the Coroner's Inquest, and by an Indictment, with the Murder of Mr. Lattrell; they say they are not guilty of this Murder, and whether they are guilty or not is your Business to consider, and whether you are to believe what they say, or what the Evidence says. I am to tell you that the Evidence is, that the first of these Defendants, who it seems was a Servant to Mr. Lattrell; he tells you, that upon Tuesday, but he doth not remember the Month, or the Day of the Month, but it comes out from the other Witnesses, that it was the 17th Day of October, he says his Master was going down to the Water-side in order to take Boat, for it seems he lodged in *Swamp Street*, and he says a little Man ran after him, and clapped him on the Back. He did not then know him, but now says his Name is *Tranter*; or that his Master told him, he would pay the Money. He did offer in the Evidence he gave, at first he did not remember that he desired them to go to his Lodging, but he desired them to go with him to *Westminster*. But the Officers thought that was not reasonable, then afterwards he says, that with much Persuasion he prevailed with them to carry him back to his Lodging; and that an Officer did carry him back to his own Lodging; he says, his Master went up Stairs, he followed after; when he came up Stairs his Master demanded of the Officer, that was with him, the fat Man, which is *Reason* (for *Tranter* was gone to get a Set of Cloths from the Attorney), he desired of the Officer his Warrant; the Officer did show him his Warrant; he said, he took the Warrant in his Hand, and afterwards threw it on the Ground, using a very indecent Language, he said take it and take it back to your Master. He tells you that he was there formerly known to the Officer, who that he went down upon the Door, and he says he sat in *Tranter*, and he came up to the Dining-Room, and he followed him. Now, he says, on his second Examination, before he came into the Dining-Room, he did hear the Noise of a Blow given, formerly the Lord giving his Evidence hastily, and not so well considering, he said he did not hear any Blow given; but on his second Examination, he said he heard a Blow given before he came into the Dining-Room. He says, when he came into the Dining-Room, *Tranter* had got hold of Mr. Lattrell, and was running of him against the Wall; and that *Reason* had his Sword drawn and was striking at him with his Sword; and he says, as he was preparing himself to make another Thrust, he took hold of his Sword-Arm, and prevented them, and *Reason* with some Passion said, *Damn you, get you out of the Room, off you fall, off before your Master*. With that the Boy went out of the Room, and went down Stairs and cried out *Fire and Murder*, in order to alarm the Neighbourhood; he tells you while he was there he heard a Pistol go off, and before he could get up Stairs he heard another Pistol go off, this is the Evidence given by *Harpison*. They have called another Witness, *High Reason*; the Jury he heard his Master go into in the Morning, and a little time after the head him return again, and there came with him *Reason*, one of the Prisoners at the Bar; *High Reason* then, that his Master came in so short a Time after he went out, he had not time to hear what the Meaning or Occasion of his Master's return; he is seen with the Jury, he heard his Master talking of an Arrest, and he seemed to be in a Passion with the Ballist that was with him, and said he had not told him well, but should have given him notice before he arrested him in the Street; the Jury, the witness afterwards into her Master's Bed-Chamber, which were near the Room where they were, and a little time he heard his Master go up Stairs, and in a short time after return again; with that he heard the Cry to go in, and see what was the Matter; he heard his Master being big with Child he was therefore more curious than ordinary to prevent the Mischance falling on her Mistress; he found her Master with two Pistols in his Hand, he stuck one of the Pistols on one Side, and the other on the other Side in his Coat; the witness admonished her Master, and desired him to consider the Condition of her Mistress, and not to do any thing to fright her; upon that

(a) *Cole's Case*, 221.(b) *Kings's Reports*, 229.



[illegible]











*Senj. Branshaw.* Did you ask him what was become of Mr. Griffe?  
*Branshaw.* I did then ask him what was become of Mr. Griffe, and he told me that he believed he was gone home in the dark. In about two or three Minutes after, Mr. Griffe came in. He was very much wounded and bloody. I was so surpris'd that I could not take particular notice of him.

*Mr. Robt.* How long was it from Griffe's going out to his coming in again?  
*Branshaw.* It was near half an Hour.

*L. C. J.* So then Coke returned in about ten Minutes, and Griffe in near half an Hour.

*Branshaw.* Yes, my Lord.

*Senj. 8<sup>th</sup> Dy.* Did Mr. Cole see Mr. Griffe when he came back to his House?  
*Branshaw.* Yes.

*Senj. Sol.* What did he say?

*Branshaw.* He seemed to be in a great Confusion.

*Mr. Robt.* Do you know of any Estate that would have come to Mr. Cole after Mr. Griffe's Death?

*Branshaw.* I cannot positively say it of my own Knowledge.

*Mr. Robt.* We will ask Mr. Griffe that Question. Pray Mr. Griffe, would any Estate have come by your Death to Mr. Cole?

*Griffe.* In case I had died, one hundred Pounds per Annum would have come to his Wife, as one of my Sisters.

*L. C. J.* Have you then no Children, nor Brothers?

*Griffe.* No, my Lord; my next of Kin are three Sisters, one of which is Mr. Cole's Wife, the would have been one of my Heirs.

*Senj. Sol.* Call Mr. Sturgess. (*He appeared, and was sworn.*) What do you know concerning this wounding of Mr. Griffe?

*Sturg.* I am a Surgeon by Profession, and the first Day of January last at Night, about eleven o'Clock, I was sent for to Mr. Griffe at Mr. Cole's House: When I came, I found him very much wounded and cut, and in a very weak Condition, and that he had lost a great deal of Blood.

I examined his Wounds: One Wound began at his Right Ear, divided the Skin Part of his Cheek, and ended on his upper Lip just under his Right Noddy; the Flesh was all divided, and the Jaw left naked. Another Wound divided the Right Side of the Neck, and made an oblique Cross over the Wound, and ended near the Right Under-Jaw.

*Senj. Sol.* Was his Neck hit?

*Sturg.* Yes, Sir, the neck was cut from without into the Noddy; the Edge of the Neck was not cut through, but there was a Cut or Slit in the neck that went through; I sew'd it up. It was sealed but with one Sitch; it is yet visible, and the Neck was cut through.

*Senj. Sol.* Were there any other Wounds?

*Sturg.* There was another deep Wound under his Chin, that reached from one Jaw to the other. There was another Wound, which began at his Chin, crossed the Left Under-Jaw, and ended towards his Ear. There was also a small Wound on his Left Cheek, another on his upper Lip, and another on his Left Temple.

*Senj. Sol.* How many Wounds had he in all?  
*Sturg.* Seven.

*Senj. Sol.* Do you think there were seven distinct Wounds, that had seven distinct Issues?

*Sturg.* I take it, that every one of the seven Wounds had a distinct Issue.

*Senj. Sol.* With what Instrument did you apprehend these Issues were given?  
*Sturg.* It was cut to clean, that I thought it was done either by a Knife or Razor.

*L. C. J.* Let the Jury for Mr. Griffe's Wounds.

[*Then his Face and Wounds were shown to the Jury for their Observation.*]

*Senj. Branshaw.* Swear Charles Widdell. (*He swore due oaths.*) I think you are a Constable in Burg St. Edmund's Ward, I am.

*Senj. Branshaw.* Had you any Occasion to speak to Woodburne concerning this Matter, or to ask him what he say?

*Widdell.* I had a Warrant from Alderman Wright and Mr. Sergeant Reynolds to apprehend Cole upon Woodburne's Examination.

*Senj. Branshaw.* The Question asked you is, What you know of Woodburne's Confession, and what he said to you about this Matter?

*Widdell.* After Woodburne was committed, I was with him, and asked him, Whether he was concerned in the wounding of Mr. Griffe? He told me, Yes, he was. I asked him how long Cole had with him? He said that he had struck Griffe three or four Blows before Cole left him.

*Senj. Branshaw.* What else did you ask him, or did he say to you?

*Widdell.* He told me, that he was walking up and down in the Church-yard when Cole whistled to him, and that on that Signal he went up and assaulted Mr. Griffe.

*Senj. Branshaw.* Did he give you any Account how long and where he waited before the Fact was done?

*Widdell.* He told me, that he was desired by Mr. Cole to be up and down in the Church-yard about nine o'Clock that Night, and that being a cold Night, Cole gave him a Bottle of Brandy, and told him he could not tell what time Griffe would come home, but desired him to be ready, and to stay, till he never so long.

*Senj. Branshaw.* Did he tell you with what Instrument he did it?

*Widdell.* He told me, he did it with an Hook or Bill, that was very good for the Purpose, and that it was in his House at the Right Hand of his Door. I went according to his Direction, and found it, and brought it to him; and he said, that was the Hook.—The Hook I have brought with me, and this is the Hook that I have now in my Hand.

*Mr. Robt.* Call William Woodard. (*He was sworn.*) Give my Lord and the Jury an Account what you know of this Matter.

*Woodard.* I am the Grocer; and the Day after Mr. Cole was committed to me, about five Minutes after Dark, he sent for me up into his Chamber, where his Wife was crying and in great Distress, as he seemed to be likewise. She was desiring her Husband to discover. When he came to himself, he told me, that he and Woodburne had had a Design to murder Mr. Griffe, and had attempted it several Times; and desired me to go and secure Woodburne. I went to the Alderman, and told him of it, and he gave me the like Orders. Coming from the Alderman I met Mr. Cole's Man, who asked me, whether I had found him? On which I asked him, why, and what he meant, thinking him to be ignorant of his Master's Confession: But he told me, that his Master had discovered it to him, and had sent him to take up Woodburne. Whilst we were talking, we saw Woodburne coming up, and we desired our John Carter, a Smith, who was shooting a Horse, to assist us, which he did, and we secured Woodburne.

*L. C. J.* Did Mr. Cole confess any thing to you concerning this Fact, and the Manner of doing it?

*Woodard.* Yes, my Lord, he did. He told me several Times, that he had a Design to murder Griffe, and that he employed Woodburne, and delivered Griffe into his Hands.

*L. C. J.* Did he tell you that?

*Woodard.* He did tell me so: He told me also, that it was done with an Hook, and that he bid Woodburne to cut his Wound or Wound-pipe, and that if Woodburne had not been a cow-hearted Dog, he would have done so, and secured Griffe from telling Tales.

*Mr. Robt.* Did Cole tell you what Means he said to do this to Mr. Griffe?

*Woodard.* He said, that he called him out of his House, went into the Church-yard with him, and there bedelivered him into Woodburne's Hands.

*Mr. Robt.* Did he say what signal was given?

*Woodard.* Not that I remember; but he said, that Woodburne was placed there by his Appointment.

*Mr. Robt.* For what Design?

*Woodard.* With an Intent to murder him. When Woodburne struck him, Cole said, he went away immediately.

*Mr. Robt.* What have you heard Woodburne say concerning this Fact?

*Woodard.* I have heard Woodburne say, that he and Cole had lain in wait several Times, and at several Places, to murder Mr. Griffe.

*Mr. Robt.* Did Woodburne give you any Account what he did at this Time to Mr. Griffe?

*Woodard.* Yes he did; he said that he struck him a Blow with his Hook, and that not soon striking him down, he gave him a second Blow, which did, and that Griffe, as he was falling, (who was never used to fear) cried out, God damn him, and that then it were to me, for my Heart to think that he should kill a Man with an Utter in his Mouth.

*Mr. Robt.* Did he say he gave him several Blows?

*Woodard.* He said he gave him several Blows, and that he thought he was dead.

*Mr. Lee.* Call Robert Allen. (*He appeared, and was sworn.*) What did you know of this Matter?

*Allen.* When I heard what happened to Griffe, I said, I knew the Person who did it, or the Person who employed him to do it; and the Reason was, because three Years, or three Years and a half ago, Mr. Cole sent for me, and said to me, at first I thought it to be in a jelling Way, that he wish'd Mr. Griffe out of the World, he was a good-for-nothing Fellow; his Wife had a Trick of playing away his Estate, and he wish'd somebody would knock him on the Head. Sir, said I to him, what Advantage would that be to you? He thank'd his Head, and said, a very good Estate. Said I, I thought Griffe had but a small Estate. Yes, said he, a very good one. Then I began to think there was something in it. After some little time, said he, I do not value ten or twenty Guineas so much now as the Head. Then I began a little to reflect that he should have had an Opinion of me, that I should be such a Sort of a Person.

*Mr. Lee.* What then did you say to him?

*Allen.* I told him, that I would not kill the greatest Villain in the World for ten such Towns as Burg.

*Mr. Lee.* What did he say afterwards?

*Allen.* I do not remember, I have forgot if there was any thing else.

*Mr. Lee.* How came you to remember this?

*Allen.* When I heard of this Fact committed on Mr. Griffe, then it came into my Memory.

*Senj. Sol.* Call John Carter. (*He appeared, and was sworn.*) What Trade are you of?

*Carter.* A Blacksmith.

*Senj. Sol.* Did Cole at any time send Woodburne for you, and what pass'd thereon?

*Carter.* On the Friday before New-Year's-Day last, which was on a Monday, Mr. Cole sent Woodburne to me, who told me his Master Cole wanted to speak with me.

*Senj. Sol.* Did you go?

*Carter.* Yes; I went to his House, and he ordered me to come up to him in his Chamber. When I came up, he told me that he wanted a good strong Horse to carry his Weight. I told him I did not know of any one then; but when I did, I would let him know. Upon that he said, By God, how do you go on, Boy? I hear you have lost most of your Business, you have got no Iron nor Coal, and you are almost of a Goal; I have a Thing sent in Apportion that will make a Man of you as long as you live. I said I should be very glad of that. Said he, can you keep a Secret? Yes, said I, as well as any one, to leave myself and my Friends, said he, Can you keep one of the biggest Secrets in the World? I told him, as well as any body. Said he, You are pretty much in Debt, and if you will serve me in this, I can make a Man of you as long as you live: Do you think you could cut five or six Men's Heads off without Scruple of Conscience? I told him, No; it was too much for a Man's Conscience to bear. Said he, What, a Scruple of Conscience to do such a Thing as that? There are those above who have done ten times worse I suppose, Sir, said I, you mean the Six-to-Six Gentlemen. Yes, said he, so I do; they have ruined Families, and beggar'd Gentlemen. To cut Men's Heads off is but a Trifle to them. Said I, Mr. Cole, I believe you speak only in Joke, by way of Merriments. Said he, What do you think I intend for you by way of Joke? I told him I could not do any such Thing. Then, said he, do you think you can cut off one Man's Head without Scruple of Conscience? I told him, No. Then, said he, if you can't cut off a Man's Head, and say it down upon the Table before me, you are not for my Turn: On that he fetched a Bottle of Brandy, and gave me a Glass or two, and then said to me, Carter, I would have you go home, and consider of it for two or three Days, and if you can cut off a Man's Head without Scruple of Conscience, you shall have Plenty of Gold and Silver, and any thing else you will. I told him, I needed







**L. C. J.** Have you any Witnesses, or any body to speak for you?

**Woodburne.** My Lord, here are my two Daughters in the Court; I desire your Lordship would be pleased to hear them, *Ann Woodburne and Sarah Woodburne.* *(The two young ladies appeared, and were sworn.)*

**L. C. J.** What say you, *Ann Woodburne*?

*Ann Woodburne.* On the *Wednesday* before *New-Year's-Day* I came first for my Father by his Boy; I told the Boy my Father was in Bed, and took of an Apron, and could not see him. The Boy came again, and said, My Father must be all Mourn come; but he would not then go; but he went to him on *New-Year's-Day* in the Morning, and came Home again. About five or six a Clock in the Evening, my Father went out with a Hook in his Hand; and he said, he should not be at home till eleven or twelve at Night; and if any body came for him, he bid us not take any Notice but that he was at home. We thought he took the Hook to cut some Wood with.

**L. C. J.** Have you any thing more to say?

*Ann Woodburne.* When my Mother died, I went to Mr. Cole's to borrow five Shillings of him, to have the great Bell toll for my Mother, and told him, that my Father would pay him again. He said, What signifies the ringing of the great Bell? his Soul would be never the better for it; but if he will satisfy me in my Request, he shall have five times five shillings.

**L. C. J.** What say you, *Sarah Woodburne*?

*Sarah Woodburne.* Cole did frequently lend for my Father at all news, both of Day and Night; and he would often come to my Father, and when he came, they would go out, and walk down the Back-side, and talk together. After this Fact was done, Cole told his Boy for my Father, and the Boy said, they must not go together, for if they did, People would take Notice of them.

**L. C. J.** *Woodburne*, have you any thing more to say?

*Woodburne.* This Day nine Weeks, which was a Week after the Fact committed, Cole sent for me, and said, Tell me, I wish you would have done the thing I ordered you; but you have been before *Albion Wright* and the Recorder, and have said your Story well; but told you last, they will examine you again; I shall—

**L. C. J.** This is subsequent to the Fact, and is no Evidence against Cole. If you, *Woodburne*, have done, then Mr. Cole what have you to say for yourself?

*Cole.* May I please your Lordship, I am much afraid, and very uneasy to defend myself. I am afraid to think I should be concerned in it; because a Crime against Mr. *Crofts's* Life, I am even confounded at it; it is indeed a very great Crime, and I know not what to say for myself. As for *Woodburne*, he hath alleged against me several things that are false.

**L. C. J.** I have told the Jury, that what he hath said is no Evidence against you.

*Cole.* When I first spoke of this Matter to *Woodburne*, he said, he should value it no more than the turning off the Head of a Dog. I did, indeed, go out with Mr. *Crofts* that Night, but I was not near him when *Woodburne* struck him, but I rested to the own House in a Moment. My Lord, I am very sensible that a Point of Law may stick on the Statute whenon I am indicted.

**L. C. J.** Whereon?

*Cole.* With respect to my Intention.

**L. C. J.** Your Intention is Matter of Fact, and must be tried by the Jury, whether your Intention was to maim and disfigure; this does not seem to me to be a Point of Law, if there be any Point of Law that shall arise, you shall have Counsel to speak to it; but whether you hit Mr. *Crofts's* Nose with an Intention to disfigure him, is a Matter of Fact.

*Cole.* My Intention was to kill Mr. *Crofts*, and not to maim or disfigure him.

**L. C. J.** But that is the Question the Jury are to try, whether you did not of Malice hit his Nose, with an Intent to disfigure him? If the Jury do not find that you so did, you must be acquitted on this Indictment. Supposing your Design was to kill, yet your Design might be likewise to maim, and thus the Jury must try, this is Matter of Fact for their Consideration.

*Cole.* This is a very good Statute, and I am unable to plead my own Cause; I beg your Lordship will give me Counsel.

**L. C. J.** If any Point of Law does arise upon the Statute, you shall have Counsel; but as yet there is nothing but Matter of Fact; whether the Fact proved does support the Charge, in the Indictment; or, in other Words, whether the Evidence be sufficient to make good the Charge; this must be left to the Jury. I will state the Fact to them, and they are on their Oaths to give us the Verdict.

*Cole.* This is a very good Statute, and I cannot argue it for myself; I hope your Lordship will assign me Counsel; that is the first Indictment that ever was upon this Statute.

**L. C. J.** What do you say to the King's Counsel for it?

*Serj. Selby.* After he has an Answer as your Lordship has given, I think it but vain to say any thing. I always thought that a Matter of Law could arise upon this Fact and Indictment; for *Woodburne* said the Fact of Malice first thought, by lying in wait, and with an Intention to maim; Mr. *Cole* was asking, whether, and prey to the Fact: Therefore, though it was an Intent to kill, it must be to maim also, he could not intend to kill him with such an Intention, without intending to maim him first; and therefore, if there were two Intentions, and but one executed, there is no Pretence to say, that what was executed was not intended. Mr. *Cole* says, that never was any Indictment before upon this Statute, if so, it must be because no Man before our thought of being guilty of it besides an Adulterer.

**L. C. J.** If any Point in Law does arise you shall have Counsel; but the Fact must be as of an Indictment, before the Law can come in Debate. You try, your Intent was only to murder; but that is not yet agreed or found to be the Fact: It is the Point now in Trial, whether you did it not with an Intention to maim or disfigure; and according as that Intention

shall appear to the Jury, so will they either acquit or condemn you; so, if you have any thing more to say, I bid you to go out.

*Cole.* I submit to your Lordship's Judgment.

**L. C. J.** Gentlemen of the Jury, this is an Indictment of the P at the Bar, *John Woodburne* and *Ann Cole*, for Felony, by Force, by Fraud, and by Malice, and malice aforethought, in the killing of *Edward Crofts*, with Intention, in so doing, to maim or disfigure the said *Edward Crofts*; *John Woodburne* is indicted for the same Offence, as the other is; and the Fact, and that *Ann Cole* is indicted for being an Accessary, and abettor, in the same Offence. This Indictment is founded on a Statute made in the twelfth Year of King Charles the Second, intituled, *An Act to make false making and to extend*; whereby it is made, That if any Person, from and after the twentieth fourth Day of March, in the said Year 1671, on Purpose, and of Malice aforethought, and by Force or Fraud, shall unlawfully cut off, or disable the Nose, ear, or Eye, the Nose, ear, or a Neck or Lip, or disable any Limb or Member of any Subject of his Majesty, with Intention as is doing to maim or disfigure, in any the Manner before-mentioned, such his Majesty's Subject, that then, and in every such Case, the Person or Persons so offending, their Counsellors, Aid, and Abettors (knowing of, and consenting to the Offence, as afore-said) shall be, and are thereby declared to be Felons, and shall suffer an Outlawry, without Benefit of the Clergy, and the Question on this Indictment is, whether *John Woodburne* did it on Purpose, and of Malice aforethought, and by lying in wait, unlawfully the Nose of *Edward Crofts*, with an Intention to maim or disfigure the said *Edward Crofts*, and whether *Ann Cole* was an Accessary to the said Fact, and abettor of the said *John Woodburne* in the said Offence.

To make out this Matter, several Witnesses have been called, the first Witness was *Edward Crofts* himself, who testified, That *John Woodburne* married his Sister, and Mr. *Brown*, *Cole's* Sister; and that *New-Year's-Day* they were invited to sup at Mr. *Cole's*; and that before supper, Mr. *Cole* proposed to go to Mrs. *Abbot's*; and that after Supper, about a Clock at Night, Mr. *Cole* called Mr. *Crofts* out of the Parlour to the Mrs. *Abbot's*; and that when they had walked three or four Times before the House where Mrs. *Abbot* dwelt, *Cole* took him, and made him like a hallooing, which made Mr. *Crofts* afraid, being alone, to make toward the Wall, but in a Quarter of a Minute's time, a Man came and knocked him down: When this Man was, one what was then done to him, he could not then tell, because by the blow he lost his Sight for some time, but afterwards he got up again, and returned to Mrs. *Abbot's* House, from whence he came, but in a few Minutes, much sooner, and bloody, where Mr. *Sturgeon* the Surgeon came to him, from whom you have the Particulars of his Case. He says, that *Cole* was clothed with him when he was knocked down; but did not hear a word say any thing. He also says, that upon his Death, one hundred Pounds he should have given to *Cole's* Wife, as one of his Sutures and Co-heiress.

The next Witness is Mr. *Brown*, who married *Cole's* Sister; and he says, that he, his Wife and Daughter were invited to sup at Mr. *Cole's*; the Evening of *New-Year's-Day*; that he came to sup at a Clock, and found Mr. *Cole* and Mr. *Crofts* drinking a Glass of Wine in the Parlour before Supper; that he sat down and drank with them till Supper; that after Supper they came into the Parlour again, and some time after *Cole* went out of the Room, and then came back again, and called Mr. *Crofts* out of the Room, who followed him; that *Cole* returned again in about ten Minutes, and seemed to be out of Breath, as if he had been walking (after that estimate) that *Cole's* Horse in the Court; and that *Cole* came in, drank a Glass of Wine; and that *Brown* asked *Cole* what was become of Mr. *Crofts*, and that *Cole* said, He is hurt; he was gone home in the Dark; and he said that at three Minutes after Mr. *Crofts* came in much wounded and bloody; and that it was about half an Hour between the Time of Mr. *Crofts's* going out and returning again.

Mr. *Sturgeon* the Surgeon swears, that being first sent for, he came to Mr. *Crofts* about eleven a Clock that Night, that he had lost a great deal of Blood, and was very much wounded; and that in the while he had received seven different Wounds, which he apprehends were by many several Blows. He hath given us a particular Description of the several Wounds; the second Wound is that which is alleged to be within this Statute. He tells you, That this Wound did pierce the right Side of the Neck; and that through the Edge of the Neck was not cut through, yet it was cut through in another Place; the Neck was not, there was a Cut from without into the Neck, indeed the Skin was very great, but he feared it up with one Stitch; but he is sure that a slit three times, and you have seen Mr. *Crofts's* Neck. Now the fitting of the Neck is one of the particular Facts mentioned in the Statute.

Mr. *Wright* the Constable swears, That he was with *Woodburne* after his Commitment, and that he told him, he was concerned in the wounding Mr. *Crofts*; that he had been there waiting for that Purpose, and that when *Cole* walked to him, he went up and made the Assault upon Mr. *Crofts* with an Hook or Bill, that was new-ground for that purpose, and directed him where to find it in his House, which he accordingly did, and brought it to *Woodburne*, who said that was the Hook, and the Hook had been new produced before you, and you have seen it.

The next Witness is Mr. *Wright* the Constable, who swears, That the Day after *Cole* was committed to his Gaol, *Cole* first for him up into his Chamber, and told him, That he and *Woodburne* had a Design to murder Mr. *Crofts*, and had attempted it several times, and I desired him to go and secure *Woodburne*; which he accordingly did. He hath given you an Account how and in what manner he secured him; and he swears moreover, that *Cole* told him several times, that he had a Design to murder Mr. *Crofts*, and that he employed *Woodburne*, and delivered *Crofts's* Handkerchiefs that *Woodburne* did so with an Hook, and that he had *Woodburne* to cut his Windpipe; and that if *Woodburne* had not been so cowardly, he would have done so; and that, and feared *Crofts* from a third Tale. *Woodburne* likewise swears, that *Cole* told him, that he and *Crofts* out of his House, went into the Churchyard with him, and there he















I believe it has been truly said by the Prisoner, that the present Prosecution is the last Influence of any Proceeding on this Statute, and I hope it will be the last; because it is to be hoped there never will be found any other Person so wicked, as to give Occasion for a Prosecution on this Statute.

I have likewise, that the true Design of making this Statute was to subject Persons to Death, who intended to murder only, where the meaning was in fact in manner as is mentioned in the Statute; but I can't think that it does from thence follow, that a Person who intends to murder, and only means, is not within this Statute; for though it should be taken that there was an Intention to murder, yet from the Fact done from the manner of doing it, and from the Weapon made use of, it seems apparent that the Prisoner intended to murder, and this Jury have now found that he did so intend.

As to the Case which the Prisoner has cited, I beg leave to consider each of them, and offer such Answers to them as may occur.

The first Case has been offered to me, is thus put: *A and B, of Malice fore-thought, appear to meet and fight a Duel, B in the Recounter runs B into the Eye, and puts it out. The Prisoner says, such a Case would not be within this Statute.*

I agree it would not, because this Case has not the Circumstances which the Statute requires; for in the Case thus put there is no lying in wait, which is a Circumstance required by the Statute.

It is said, that if *A* lies in wait to rob *B*, *B* resists, and in the Scuffle a main'd in the Manner described by the Statute, that such Maiming would not be punishable by this Statute; but I don't observe any Case is cited to prove this Assertion; And I am, with submission to your Lordship, inclin'd to think, that if there are a lying in wait, with Malice fore-thought, with Intent to rob, and in prosecuting this Intent the Robbers should assault and maim in the Manner described by the Statute, that such Maiming would be within this Statute.

It is said, that though the Intent to murder makes the Offense worse than if the Intent had been only to maim, yet such Intent proves it is not to be the same Offense which is mentioned in the Statute: And if a Man is indicted of an Offense of an inferior Nature, and upon the Evidence it appears that he is guilty of an Offense of a superior Nature, the Prisoner indicted must be acquitted; And I am, with submission to your Lordship, inclin'd to think, that if there are a lying in wait, with Malice fore-thought, with Intent to rob, and in prosecuting this Intent the Robbers should assault and maim in the Manner described by the Statute, that such Maiming would be within this Statute.

Admitting this Case to have been adjudg'd, I apprehend it does not affect the present Case.

The Law has distinguished Crimes under different Denominations; and as Offenses are rank'd under different Species, so the Indictment must be found, so that Sort of Crime whereof the Party is guilty, and therefore proving a Person guilty of a Fact, known in the Law by the Name of Petty-Treason, does not prove him guilty of an Indictment for Murder; Murder being an Offense which the Law has distinguished from Petty-Treason, and to which it has assign'd a different Punishment.

But in the present Case, that Offense which is charged in the Indictment, is proved in every Circumstance, and the Facts proved do constitute that Crime which is made Felony without Clergy by the Statute. The Statute requires lying in wait, it requires Malice fore-thought, it requires killing the Male, &c. with Intent to murder, &c. The Indictment charges these Facts, the Witnesses have proved these Facts to the Satisfaction of a Jury, which have found the Defendant guilty of the Charge so laid.

The Prisoner says farther, that this is a very penal Statute, and that penal Statutes are always taken with the utmost Strictness; and to prove this, cites a Case adjudg'd on the Statute 33 Ed. by which Statute Clergy is taken away from any Person or Persons, who shall be convicted of taking away Money, &c. in any Dwelling-house, &c. in the Day-time, to the Value of five Shillings. And to prove the same Matter, an Indictment is likewise put of the Construction on the Statute, 1 Ed. cap. 12. which takes away Clergy from such Persons as shall be convicted of feloniously stealing Horses, &c. The Case in the Statute 33 Ed. is the Case of *Evans and Finch, Cro. Car. 473.* in which *C. Finch* had no Clergy, because he did not actually enter the Chamber and take the Money. The Construction on Ed. VI. was, that Clergy was not taken away from a Person who feloniously stole one Horse.

But I apprehend neither of the Cases come up to the Case now before your Lordship. As to the Case of *Evans and Finch*, which was a Case upon the Statute 33 Ed. By that Statute a Person is outlaw'd of Clergy who takes away Money to the Value of five Shillings in any Dwelling-house, &c. *Finch* did not enter into the House, for he only stood on the Landing, and therefore he was not within the Words of that Statute, which speaks only of Persons who took away Goods in an House, &c.

As to the Construction upon the Statute 1 Ed. VI. it is plain that the *Indictment* stating one Horse could not be within an Act of Parliament, which took away Clergy only from such Persons as feloniously stole Horses. The Reason, therefore, of these Cases was, that the Facts proved did not bring the Persons accused within the Words of the Statute.

But it is not in the Case now before your Lordship; for the Prisoner is found guilty of a Fact, which is within the Words of the Statute upon which he is indicted, and every Circumstance required to make him guilty of the Felony mentioned in the Statute has been very fully proved.

My Lord, I am very sensible that the Objections taken at the Bar be-

ing after Verdict, did not require their particular Answers; but there is a Case wherein Law is concerned, I hope the Insuperior will be excus'd.

*L. G. J.* I do agree with the Prisoner, that this is a penal Law, not to be extended by Equity. That he that is guilty within this Statute, must be guilty of all the Circumstances mention'd in it, and if any one of the Circumstances prescribed by the Statute be wanting, he is not guilty. And therefore in all those Cases put to you, if any one of the Circumstances prescribed by the Statute be wanting in any one of them, the Case is out of the Statute. But whether all the Circumstances require'd by the Statute do not concur in your Case, was a Matter of Fact, was the Jury, who are the proper Judges, have tried, and on each Trial have found them all to concur. You come to argue upon a Situation of this Fact to be otherwise than the Jury have found it. I have found you guilty of all the Circumstances within the Statute. I was no Matter of Law in this Case, but Matter of Fact; whether or no, and of Malice fore-thought, and of lying in wait, the Statute requires, and of Malice fore-thought, in fact, to maim or disfigure, and whether you were not feloniously printing, seditious and seditious? I Jury had the whole Evidence before them; they considered of the whole Matter, of the Preparation and lying in wait to do the Fact, of the Fact itself, of the Means and Instrument made use of to do it, of the Manner of doing it, and of all the other Circumstances and Particulars relating to the Facts: And on the whole, after they had withdrawn, and considered amongst themselves for some time, they have found you guilty within the Terms and Circumstances of the Statute; so that the whole Case put to you should be very good Law, yet they do not any wife affect you, because you are actually found guilty of the Crime itself: Have you therefore any thing to say against the Indictment itself?

*Mr. Cole.* No, my Lord; I hope I have not Glorified more than the King's most gracious Pardon, that was published in the Gazette.

*L. G. J.* If you offer any Pardon by Act of Parliament, or under the Great Seal, I shall take notice of it, and allow it to you; but if you mean only a Pardon of a Pardon in the Gazette, or other public Advertisement, you may apply for that in another Place; this doth not belong to me.

*Mr. Cole.* I hope that I shall have the Benefit of the Pardon that was promised, and that his Majesty will be graciously pleas'd to grant it me.

*L. G. J.* If you have a Right to it, you will make good whatever he has promised; but for this, your Application must be immediately to his Majesty.

*Mr. Cole.* I beg of your Lordship that you will give me Time, that I may not be hurried out of the Word presently.

*L. G. J.* I shall consider of it, and give you a convenient Time.

*Mr. Cole.* I hope that I shall have the King doth finally charge and condemn all manner of Persons to keep Silence, whilst Judgment is giving upon the Prisoners convicted, upon Pain of Imprisonment.

*L. G. J.* You that are the Prisoners at the Bar, you have been indicted and convicted of very great and heinous Offenses; I am very sorry that you have been the Occasion of bringing yourselves to undergo an Trial, and that there is this indelible Necessity on me to pronounce the Sentence of Death upon you - But on fair Trials the Jury have found you guilty, and by the Law you have forfeited your Lives.

*Mr. Cole.* My Lord, I am ashamed of myself; I did not expect to appear at this Time in this Place, where I have appeared in another manner.

*L. G. J.* I am sure, *Mr. Cole*, you ought sensibly to reflect on your past Life: You cannot but see that you have been a great Sinner; you have had Malice in your Heart against this Gentleman above three Years.

*Mr. Cole.* Indeed, my Lord, I know nothing of it.

*L. G. J.* *Alas* hath sworn, that three Years, or three Years and a Half ago, you sent to him, and propos'd to him the knocking *Mr. Criffe* on the Head.

*Mr. Cole.* I do declare it, my Lord, as I shall answer it at the Great Day, I never spoke to *Alms* about any such Thing.

*L. G. J.* Supposing what *Alms* had said to be too much, yet the Crimes you own and cannot deny are exceeding heinous. You own that you invit'd your Brother to sup at your House, on purpose that you might have an Opportunity of murdering him. This is such a Crime as shocks human Nature: The base mentioning of it is frightful and terrible. The deeper therefore your Crime is, the deeper your Repentance ought to be. You have now to humble yourselves before Almighty God. Besides the Judgment of the Law, there is also his Judgment-Scale, before which you must blow up: There all Things are naked and bare, without Colour or Disguise, every Man must then appear, and return according to the Truth of his Actions, as they were good or bad. How far it may please God to extend his Mercy to you, I know not, but we see here, that Mercy as well as in every other Particular. And this we see here, that he never denies it to any who are prepared to receive it. Endeavour therefore to reconcile yourselves to him; forgive with Diligence the little Time that may be allotted you: Send for proper Persons who may advise and assist you. For as to the Judgment of the Law which is to be now pronounced upon you all, it is this:

That you, and each of you, go from hence to the Place from whence you came, and from thence to the Place of Execution, where you shall be severally hang'd by the Neck till you be dead, and so be beheaded; and the Lord have Mercy upon your Souls.

Then the Keeper carried away the Prisoners to the Gaol, as he refus'd till their Execution. And on Saturday the 31<sup>st</sup> of March, 1722. they were executed at *Bury St. Edmund's*.











in receiving *fish* that can grow 2 in. in 100 days. *Channa argus*,  
I have put in my words entirely, and I think you must be the  
winner or subsequent; leave out *Channa*, and I must be  
the winner to you and smilingly say, I am glad to hear you are

Reading will oblige on reading the *Captain's* *Journal* of the *U.S.S. "Albatross"*, *U.S.N.*

...but I believe that Right cause is always right.

the law of Exemption, that is relative to the fact of the subject being a thing, that it be not expressly within the Terms of the Statute of Parliament. And, as to the fact of being a thing, it is to be determined, whether it is not subject to confere, upon such as these

it was impossible to bring all my Authorities down to Point, but I have here in Court several of the *Changelings* which shew the true Wood to be *Christus*, and I believe of the other Side can't produce one. If there was any such *Grail* or *Leif*, but it is always left with an *O* and not with an *L*, it is *Changeling* from vines, the *Potentill* Messes of the *Grail* *Arche*, and the Rules of *Lysimach*, and Formation of *Grail* *Arche*, that it must be *O*, and cannot be otherwise; and by all the *Arche* and *Wood* of the *Grail* *Arche* *Changeling*.

L.C. : But do we know what his Name is? You must plead it in  
 the court, I don't know his Name; he might be christened Clogh-  
 an, or any name we know.

John A. M. Alford, for Life Spelling.—  
 I have with that appear to me? You are wrong in making your Time of this Time, we can't take notice what his Name is; in the Record of the Indemnities is called *Chelphorse*. Can we enquire what his true Name is, whether in *English* it is *Chelphorse* or *Chelphorse*? We can't tell what his Name is, perchance his Name may be *Chelphorse*, and the Name by which he may be children? I don't say, may be used as if I would not say, from offering any show that is material for you to know, but if I don't strictly follow the inquiry in *English*, may have the Time of the Court, but if you can offer any thing material may be made to hear it.

Mr. Kestley. My Lord, I hope your Lordship will pardon me, here is a Tale of a Man concern'd, and as I would not willingly offer any thing to your Lordship that is in the like Case hath been over-ruled, so neither would I omit any thing that may be material for the Plaintiff, whose Defence the Court has intrusted as with; therefore I will go on to the other, and affirm that we think to be *monopros, Locus, compofoct, unguentum, &c.* & intendeth. There are the Words, I don't know whether this Tale will go down in *Westminster-Hall*, but I am *fatish'd* it would not in *Windsor-Castle*.

Here is the *Et hoc est*, *Et*, a Conjunction Copulative between Verbs in several Tenses; here is *Change* of the Preterperfect Tense, *Amavimus* for the Preterperfect Tense, and *Intendimus* for the Presentperfect Tense. Why should not the last Verb have been put into the Preterperfect Tense, according to the Rules of Classical Latin, as well as the two former? Therefore we submit it how far it will go as to violating the Indisputable Point of Latin Logic.

23. Lord, there is no Word more (Sovereign) the Over-Right, as laid in the Introduction, i. that the *Primer Constituent of Sacram Perfidus Deo* *Adiudicatus*, *Adiudicatus*, & *Impugnatus*, by the Words that are enough to see, I say, that *Sovereign* is intended to mean, the taking of *Jeany* without *Heads* upon his Majesty's Person, but fare there was never such a Word in any Indubitable doctrine, nor to be found in any Author whatsoever, it is neither *Classical Latin*, *Low Latin*, nor to be met with among *Latins*'s Barbafrises, never naturalized nor inoculated into ancient or modern *Ug*, it is more *Effeminate Word* Could for this very Purpose without any Precedent, any one Influence to warrant it.

My Lord Coke, in his *4th Inst.* fol. 47. says, that the Word *Prophecy* comes of the French Word *prophie*, and that in the Common Law 'tis properly applied to Freehold, in Contradistinction to *Prophetaurus*, which belongs to Churchmen. For *Seignior* and *Proprietary* are mentioned as Terms of Art, Technical Words in the Law, that by long Use have acquired to themself as one peculiar and determined Signification; for that Reason I don't object against the Word *Compassion* as this Indolence, it having been always used in Indictments of High-Treason to express computing the Death of the King, ever since the Statute of Edward the Third, *de Homicidio, Raptu, et Forcibus* others, are the same Verbs of Art in the Law. But, where the Word *Prophecy* is used in the Word *Seignior*, it is not used in this Sense, as a Genus of some unknown Active Verb, how can the word *Prophecy* in this Sense, denote it, from the Genus as *Centaurus*?

My Lord, I must beg leave to say, that I apprehend the very Gift of this Indulgence, (at least in much of it as relates to this Overt-Act) entirely depends upon this Word *Sejourn*; and if it does appear to you *Unlawful* to be injunctive, barbarous, false or improper *Let us*, I hope we are proper under the Authority of the late Act of Parliament, humble to insist upon this Objection, and that it is sufficient to overthrow the whole Indulgence.

ly Lord Cole, in Cabot's Cafe, says, that Indiscreetness for High Tension ought to be drawn with the greatest Accuracy and Nicety, but if Mr. Attorney will please to show me, that the Word was ever once used to this Purpose, I will waive my Objection, and admit it to be as elegant a Word as any in the whole Indiscretion.

L. C. 7. I think before the King's Council make any Answer to that we may have that Part of the Indulgent read, that we may the better judge of it.

L. C. 1. *Adaptation* (1990, 1991). Woolly-bell Wren. How do the white Wrens adapt to the environment?

We produced flowers that were as proper, and others which were

The Objectives in the Commission's proposed law, in particular, are unachieved, inasmuch as they are not in the Power of the Government to achieve. Conversion, and therefore the making mention of the Government, is not a reliable and improper Law Commission's significant finding. As a result, the Government has a strong

and if they think proper, there be sufficient Cause may shew it to be an  
and Commission that is, under the Great Seal, and that Part of the Commission  
here, is not under the Power of this Court to deliver; but if we deny  
it, we think this Objection will quite vanish, these Writts are not of the  
Commissions of the like Nature, and are issued in the very name of the  
Court.

[illegible]

the Word (*Logos*) every Body at first reading must be satisfied that no Objection could be made thereto; and the Objection now is only

made on Account of the placing the Words at the End of the Sentence. But it makes no Difference in the Construction or Sense; how otherwise can it be construed or understood? But to enquire more fully the Truth of those Offences there enumerated, and what Persons are guilty, &c. And therefore I take it, that the Form of the Commission is now as

will be justified, not only by the benefit of it, but by the actual and common Course of Proceedings.—As to the next Objection, we apprehend that hath been already over-ruled, the Word (*Glyciphern*) was in *E*, and not with in *O*. And if there be any Difference in the Name that must be pleaded in Abjuration: because if they would take Adven-

tage of it, they must plead that his Name is otherwise than is expressed in the Indictment. The Man's Name *Glyndwr* may be with an *O*, as well as an *G*; for aught appears: But we are apt to think, that the Name *Glyndwr* is seldom writ in Latin with an *O*, but usually with an *E*; if they think there is any thing material in the Objection, let them plead it. At present, and we are ready to answer them.

My Lord, as in the next Objection, that the three Verbs which change the High-Tense, viz. *Comparative*, *Incomparative* full, & *Interdubious*, as they are not in the Low-Tense; we submit that in the strictest *Logic* there is no Necessity the last Verb should be of the same Tense with those that go before the *Comparative* (Et). Sure, though *Comparative* and *Interdubious* full be in the Present-perfect Tense, yet *Interdubious* may be well added in the Present-unperfect Tense, and that will make no Difference, the being all then *affirmed* and found in the Time past, before the Indubious were exhibited.

My Lord, the next Objection which they seem to rely upon, is as if the Conclusion of the Indictment, and that it is the Wood *against* the King. They say, the Persecutors have been misled, and there is no such Way to be found in any Indictment of High-Treason: I beg leave to say Answer, that since the Adversaries-Plot against King William, there has been no less villainous Attempts of this Nature; therefore no Wood if it cannot be found in other Indictments where there has been no Occasion for the Wood. This is an Over-Act of censuring and accusing to take, seize, and usurp the very Person of the King; and it must be laid according to the Fact itself; but if this be not a proper Way

though I think it *Word* is proper and significant, yet because this is not made use of in alleging the Treason itself, but the *Over-Act* Evidence of the Treason, it will not vitiate that Part of the Indictment. For if any one of these Words alleged is proved upon the Trial, it is sufficient to prove the Treason, and the others are only pleaded to raise the Presumption of the King, or to strike his Majesty, or to impair his Authority, or any one of these Attempts is sufficient, if proved, and the Prisoner ought to be convicted. There was an Objection of this Nature when upon one of the Trials for High-Treason, before my Lord Chief Justice *Hale*, he was pleaded to lay, that in alleging the *Over-Act*, where several *Over-Acts* are alleged, or several Words are used to express the *Over-Act*, if they were mistaken in one of the Words, yet if there were others which were true, it was sufficient to prove the Treason. And that a particular *Over-Act* was not necessarily essential to the Treason.

another Over-Act will lead, the Court would not shut the Infirmities because this would be to deprive the Crown of the Right of giving Evidence to prove any other Part of the same Over-Act, or any other Over-Act alleged in the Indictment, so that we hope this is not proper Ground for a Motion. — But the Court is not to be misled by the name of an other Over-Act is sufficiently explicit, but the Indictment must read plain. — But the Word is proper, because the Words *Acted as before* are Terms known in the Law, and it is frequently used in Affidavits of Treason, *Swearers, felons, &c. abducts, &c. &c.* Moreover, we think the Word of *felony* is a proper Expression in this Case. — *Acted as before* is a Term used in the Statute of the 17th of Henry the Eighth, and we hope there is nothing in their Objections.

Mr. An. Gen. My Lord, we are not against the Gentl men of t  
other Side's inflicting upon every thing that may be for their Cl our's So  
vice. But sure their Objections have nothing in them; there is no C

hour of Reason to support them. My Lord, as to the Exception taken  
the Commission, let us consider, if there was any Weight in it, how  
can possibly be taken at this Time!—By Virtue of the Act of Pa-  
liament passed in the 7th Year of the Reign of his late Majesty Ki-  
NG GEORGE II. it is provided, That no Indemnity, Grant, or Release, shall

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mentioned in that *Ad.*, which are Treasures, &c. nor any Process of Return thereupon, shall be quashed on the Motion of the Prisoner or his Counsel for not-writing, not-pelling, or false or improper *Leads* (under which last words the Counsel for the Prisoner would entitle themselves to set a this Objection) unless such Exception shall be taken and made in the respective Court, where such Trial shall be, by the Prisoner or his Counsel signed, before any Evidence given in open Court upon such Indictment—but the Commission is a Thing done, and neither Indictment, Process, or Return thereupon, and by Consequence an Objection can be made to the Commission at this Time by Virtue of that *Ad.*—but however, because they may not trouble us with their Objections at another Time, we beg Leave to answer them now.

My Lord, these Words (*placita Peritorum*) are the very Point of the Enquiry of the Commissioners of *Oyer and Terminer*, for they are to enquire, by the Oaths of lawful Men of the County, fully of the Truth of all Treasures, Misdemeanors of Treasures, &c. committed in that County, and that is the Tenor of the Commission. In the Book printed by the Appellation of all the Judges of England, soon after the Union of the two Kingdoms, all the Statutes and Methods of Trial in Cases of High-Treason are laid down, there is the Commission of *Oyer and Terminer* printed at large; and it is exactly in the same Words with this; and your Lordship may please to observe, that immediately after those Words *placita Peritorum* there is a Comma, and next before; the whole Sentence he once in entire, and therefore in Contradiction these Words, *placita Peritorum*, refer to the Words *ad inquirendum*, at the Beginning of the Sentence; and the Sense is plain, that the Commissioners are to enquire by the Oaths of good and lawful Men of the County, and by other Writs and Means, *se placita Peritorum de quibuslibet Praedictis, Misdemeanoribus, &c.* and the Commission goes on, and there comes after the Comma, *et ad causas Praedictas et alias Processibus hanc auctoritatem* &c. terminated *secundum legem*, &c. In our legal Proceedings in Latin, we are not so nice as to confine ourselves to the Laws of the Classics; but this is very proper Latin, and the disjoining of the Words *placita Peritorum* from the Words *ad inquirendum*, by which they are governed by the Interpretation of so many Words, is no Objection; for nothing is more common in the best Authors, than placing the most material Words at the Close of a very long Sentence, which in point of Construction may refer to others at the Beginning. And therefore I hope we shall hear no more of this Objection.

As to the *Christophorus* being with an *E* instead of an *O*, that is not a proper Objection at this Time. No Man will pretend to say, he may not be chided by that Name, as *Henry* is the usual Name, *Henry* is the common Nick-name for *Henry*, yet a Person may be chided *Henry*, and to have many Persons been.

But, my Lord, we say this is a Word used in all the Law Proceedings for *Christophorus*, and spelt in this very Manner with an *E*.

As to the other Objection; as to the Alteration of the Tense in the Words *compositum, ingenuum, facti, et interdictum* the Objection is made as if we were told down to the exact Form of Grammar; if one finds a plain, if the facts are explained by proper *Latin* Words, it is enough for us, whether they are copied or sometimes in one Text, and sometimes in another, provided they sufficiently charge the Fact to be done.

The last Objection is the Word *sejunctus*; that it is not a Word known in the Law; if that would hold, it would not quash the Indictment, because there are several other Words to the same Effect, which sufficiently express this villainous Overt-Act, without this Word *sejunctus*; for it is laid, that the Prisoner did prope, confit, and agree, *ad forem Peritorum dicti Domini Gregarii magistri Regis, &c. confitens, seque, ingenuus, et interdictus*. Thus we say, that this is a very proper Word. In the Court of Exchequer the Words used in Cases of Surety is *sejunctus*. When issue commanding the Sheriff *sejunctus* such Lands, &c. into the King's Hands, and the Sheriff returns *sejunctus* facti: so that if the Word was looked upon as an unknown and unintelligible Word, what must become of many Judgments and Proceedings in that Court? It is a Law-Word that is here applied to the Person of our Sovereign, and as it is in the Proceedings before-mentioned applied to His Majesty's Lands, &c. Why may it not be applied to the Person of a Person? And then if *sejunctus* be proper, the Ground from that must be *sejunctum*. And therefore we apprehend, my Lord, that this is a plain Answer, and that there is no Colour of Reason for this Objection.

Mr. Ser. Gra. My Lord, as I apprehend these Exceptions have no real Foundation, nor scarce any Colour in themselves, so I don't know whether it would not be giving too much Credit to them, for so many of the King's Counsel as attend your Lordship on this Occasion, to (send the Time of the Court in giving Answers to them. The true Answers, and all the Answers which can be given, have been already offered and very fully enforced; and therefore I shall not trouble your Lordship with any thing further.

Mr. Hargrave. My Lord, I beg a few Words by way of Reply. As to the first Objection, we hope it is not answered; we object against the Words *placita Peritorum*, at Words of no Sense or Meaning, as being placed in that Indictment. Mr. Attorney hath endeavored to make them Sense by transposing them, and inserting *placita Peritorum* ten Lines before what the Indictment hath. We must take the Words as they are in the Indictment; and if they are not Grammar, or intelligible there, the Objection still holds. I know not what Liberty the King's Counsel both to transpose the Words. I know School-boys sometimes pick up Words without Regard to Grammar, to make what they call Nonfence-verse; but I never knew an Attempt before by transposing of Words, to make Nonfence Grammar, Prose, or Poetry. There is one Thing that hath been mentioned, that the Judges have settled the Forms of Proceedings in Cases of High-Treason by Direction of the House of Lords, and that *placita Peritorum* is got into the Form inserted in that Treaty: that book, my Lord, notwithstanding the solemn Allowance of it by the Judges, is not, with Submission, a conclusive Authority: It was denied to be so in the Case of *Mathews*, which Case I can the better speak to, because I was of Council in it. The Objection taken in the Case of *Mathews*

was to the Panel of the Jury, for that the Addition and Place of Abode of the Jurymen were not inserted in the Panel, according to the Directions of that Book, the better to guide the Prisoner in his Challenges. My Lord Chief Justice King, who presided at that Trial, added by all the other Judges of England, (except your Lordship, who was absent) over-ruled that Exception; and I think the rest of my Lord the Judges, now present, concurred in that Resolution. Wherefore, we have no Authority to quarrel with, but the Authority of that Book, which hath been solemnly decided to be a good Authority, we hope that Objection shall stand.

My Lord, as to the Word *Christophorus*, without Doubt the Etyymology of the Word is as Mr. Katby hath opened; and there is this further, justly that Way of Spelling which we contend for, even the two first Syllables of the Word in the Indictment are *Chris*, as the *Grad* with an *O*, and not *Chris*; and in Conformity with the *Grad* spelling as the two first Syllables of the Word, we hope the next Syllable must be spelt *top*; but since it is contended, that the Substance of that Objection may be put into a Plea in Abatement, we shall wait the Direction of the Court as to that Matter. As to the Words *compositum, ingenuum, facti, et interdictum*, there is something in that Objection; they all relate to a Trial past, but they are in different Tenses or Time; there is the *Postscriptum* and *Presentment* Tense, and there is the *Conjunctum* Copulative between them, as if both Tenses implied the same Times, which it is certain they do not, and therefore they charge ought; for a Thing cannot be done lately and formerly, and both at the same Time.

As to the other Word, *ad opellum*, *sejunctus* is improper, we are upon the Forms of an Indictment, and must be governed by the usual Forms: I believe there is no Instance on Record, where these Words are made use of in any Acquisition of the King, for which Reasons we must hope this Indictment shall be quashed.

Mr. Katby. My Lord, I beg Leave to offer a Word or two by Way of Reply: Mr. Serjeant Pargry is pleased to say, that Sense may be made of these Words, and that *placita Peritorum* as it is, is good *Latin*, by lifting these Words from the Bottom of the Sentence to the Top, and making them follow *ad inquirendum*. I believe four Parts in five of the Captains in our Houses of Officers, several independent Sentences, different Times, Places, Places, Things all Rattled between, and yet these Words are to be understood: I would be glad to know by what Rule of Grammar this can be done?

As to the Word *Christophorus*, I shall not farther insist upon that as a proper Objection under this Head, because your Lordship seems to be of an Opinion that we ought to have pleaded it in Abatement.

As to the Word *sejunctus*, it hath been said it is a Word well known to the Exchequer, but they don't show one Instance where-ever it was used, indeed they mention a Precept to the Sheriff *sejunctus facere*, and the Return *sejunctus fecit*, but what is that to *sejunctum*; the one is justified by Ulig, the *sejunctus* as *sejunctus*; besides *sejunctus* is there used in the very same Sense where the Law is impossible to be so; it is to be put into Possession, the Lands are so delivered by the Sheriff into the Hands of the King, that he becomes seized thereof, *ad se fidei et in jure Caronis*, till an *Assize* at movable be obtained: but if ever that Word was put into any Indictment to signify to seize and imprison the King, 'tis entirely unknown to me.

Indeed here is one Piece of Doctrine offered, that if it holds good puts an End to all our Objections, and even to the Act of Parliament on which they are founded; but I must own it is entirely new to me: we are told there are other Words in the Indictment, and other Overt-Acts, which the Law is sufficiently supported by any one Word, though there be Words that are improper and false *Latin*, yet it shall not vitiate the Indictment; what avails then this Act that attempts as to make Objections in Mid-writing, Mid-pelling, false and improper *Leads*? 'Tis impossible to suppose, that whoever hath the Drawing of an Indictment should make Faults, and blunder on from first to last; no, in an Indictment for High-Treason the greatest Care is, or ought to be taken in the Drawing of it; and where the Life of a Person, and all that is valuable is at Stake, the Law will not submit any one to such dreadful Penalties and Forfeiture for an Offence expiated only by Words of an unknown or dubious Signification, and therefore, we hope that this goes to the whole, and that our Indictment shall be quashed, or else it would be necessary for us to be allowed to take Exceptions to one Part of the Indictment, if the other were good.

I believe Mr. Attorney won't show any Instance (I submit it to his greater Experience), where he ever knew one Overt-Act in an Indictment in aside, and the rest of the Indictment held good: Exceptions have, ever since the making this Act, been taken and argued by Counsel, and determined; but if this be a sufficient Answer, surely they spent the Time of the Court to very little Purpose, in debating whether there were any Faults in the Indictment, when it was to be told it was not faulty throughout. Mr. Serjeant Pargry has been pleased to mention the Opinion of my Lord Chief Justice Holt, upon one of the Trials before him, that although one entire Overt-Act was insufficiently alleged, yet if there was any other well laid, the Court would not quash the Indictment: I wish he had told us in what Trial, or where it is to be found, for I don't remember it in any of the printed Trials: as to what was mentioned, with Regard to the Authority of that Book, for the Words *placita Peritorum*, Mr. Hargrave rightly observed, that the Authority of that Book was utterly denied at the Trial of *Mathews*; your Lordship was not there, my Lord Chief Justice King presided then upon the Bench, that Book particularly directed, that not only the Names of the Jurors should be inserted in the Panel, but also their Additions, and the Places where they lived; suffered of this, the Copy of the Panel delivered consisted only of a long List of bare Names, no Additions, nor where they lived, whereupon we made our Objection, and insisted on the Authority of that Book. Notwithstanding which, the Objection was then over-ruled, and consequently we hope we shall not be put down to the Authority of this Book any more in this Case, than the others; for these Reasons we hope your Lordship will be















*L. C. J.* As to the taking off the Chains you have had the Opinion of the Court, we will abide, we ought not to do it, it is a Breach of our Duty, as to the other Matter, he desires to see his Relations, what do you say to it?

*Mr. Ser. Pargell.* My Lord, as to *Fitchard's* Case, there was a great Deal of Caution used as to the Persons permitted to see the Prisoner; before they were in they were to be searched, and they were to be with him only in the Presence of the Keeper. *Mr. Kestell.* It is mentioned there, that the Wife had misbehaved herself, and that a particular Caution ought to be taken with respect to her; but the Access of a Wife to her Husband under such unfortunate Circumstances was never denied, I believe, in any Case whatsoever.

*L. C. J.* Upon a proper Application to the Court, the Court hath sometimes ordered that Persons named in their Rule may have Access to the Prisoner in the Presence of the Jailor, and not otherwise, and that they should be searched before they come in. If you think fit to defect it on these Terms, the Court will consider of it.

*Prisoner.* My Lord, I would define upon these Terms as the Court thinks fit, and that my Sister may have Liberty to come with my Wife.

*L. C. J.* Your Wife and Sister: It may be reasonable for them to have Access as you, but they are not to be with you but in the Presence of the Jailor.

*Mr. Ser. Pargell.* My Lord, I beg leave to observe whether it is usual for the Court to make such Rule: On the Trial of *St. John Friend*, there it was only intimated by my Lord Chief Justice *Holt*, but the Court did not order it by making any Rule; they know they may apply properly, and there may be Directions given to the Lieutenant of the Prison: As to the Council that is allowed in the Act of Parliament, and as the Court hath a Power to assign Council, it is proper for the Court to give Directions for them to be admitted at all Stages, and at all times.

*L. C. J.* Why the Wife and the Sister?

*Prisoner.* Yes, my Lord, my Wife and Sister. I don't put in a Number of Relations.

*L. C. J.* I do think, Brother *Pargell*, that the Court are treated in a Manner of this Nature, and may regularly give Directions with what proper Caution they think fit. Why, he says he is denied the Comfort of his Wife, he desires that his Wife and Sister may be admitted to come to him. You say it hath been sometimes intimated, but is ordered, if it was intimated by us, and not complied with, I believe I should make no Difficulty to order it, provided it be with a reasonable Caution, and no Inconvenience in it.

Whether it is the Wife or Sister you desire? I think once enough, and the next Subject to be searched.

*Mr. Ser. Pargell.* Before your Lordship makes any Rule in this Case for the Prisoner, I beg that he may be obliged to amend his Plea of Not guilty, and that he may plead by the Name of *Christopher*, by which he is indicted. You have been brought to the Bar, and have put in a Plea by the Name of *Christopher*; if you are in Error, that you desire to waive your Plea in Abatement and have it withdrawn, you must change the Name wrote in the Commencement of the Plea, and make it sit in the Indictment, that there may be no Embarrassment in the Proceedings at the End.

*L. C. J.* You consent to have it amended?

*Mr. Hargrave.* The Prisoner at the Bar hath consented to withdraw his Plea in Abatement; and though the Plea were such that he might have prevailed upon it, yet after his pleading *Not Guilty* in general, there is not, in the Course of this Proceeding, any Period of time wherein he can avail himself with the Matter of this Plea in Abatement, and therefore we submit it to the Court, and to the King's Council themselves, to put this Matter into form a Term, that the Prisoner may come to a fair Trial upon the Issue of Guilty or Not Guilty.

*Mr. Kestell.* I believe the Prisoner is willing to come into the Method offered; and though this Plea hath been called a frivolous Plea, yet the Precavation taken by the Gentleness of the other Side looks upon a Sanction to it, and makes it not so frivolous as hath been represented.

*L. C. J.* What do you mean, *Mr. Kestell*? Here is nothing asked of you: You do desire to waive and withdraw your Plea, we desire to know, if you do, whether you will plead by the Name as is in the Indictment?

*Mr. Kestell.* My Lord, we do.

*Mr. Ser. Pargell.* We desire the Plea of Not Guilty may be amended, upon the Consent of the Prisoner.

*Mr. Hargrave.* We offer now, let the Piece of Parchment be entirely abolished, take it entirely out of the way, and we plead Not Guilty.

*L. C. J.* Your Plea must be now *et perinde* *Christopher* *desiderat hic ad harrum*, &c.

*Mr. Kestell.* We submit it.

*Prisoner.* I desire to withdraw and retract the other Plea, and do plead Not Guilty.

*L. C. J.* No, it must be amended; you will hear how it is when it is brought out and amended, and then you will tell us whether it is amended according to your Intent, or no.

*Cl. of the Co.* *Et perinde Christopher Layer alio nomen pro suo hic et nunc gradatione gradatione per indictmentem gradatione in superioris impio quod sit volens esse equitatis, Item Christopher Layer dicit quod ipse in quod sit equitatis compellitur et inde de bono et male puto se ipse Patrem.*

*L. C. J.* Is this according to your Intention?

*Prisoner.* Yes.

*Mr. Ser. Pargell.* My Lord, I believe it is usual in these Cases for the Court to appoint a Term for the Trial; the last Return but one in this Term is the 11th of November, so if you please it may be the quarter for next, which I think is a fair day, it is that be plausible and convenient to the Court.

*L. C. J.* What say you to it?

*Prisoner.* I desire your Lordship would give me a longer Day to prepare for my Trial. I have a great Number of Witnesses, twenty or more, most of them People of the first Quality. I hope I shall have the common Process of the Court to bring them here; and, my Lord, another thing I desire is, that I may have a *Habeas Corpus ad Testificandum*, to

bring my Lord *North* and *Gore*, and my Lord *Orrey* at my Trial. My Lord, you would please to give me as long a Day as you can give me for my Trial, if your Lordship please it may be Monday the 21st, then your Lordship will have a Day of Rest between.

*L. C. J.* That will be out of the Return.

*Mr. Hargrave.* They must appear, and then may be dejected.

*L. C. J.* It cannot be assured of over beyond the Return.

*Mr. Kestell.* My Lord, the Prisoner hath shown that he hath a Respect attended Delay.

*L. C. J.* It cannot be. — *God forbid* that we should deny our power to have a reasonable return, but his Defence, it is three or four days from hence, you have been aware of that long before, you have known Indictment was founded, you have a Copy of it, you have known Charge, and is set all this time. — *God forbid*, the Term draw an End, and it is necessary that the Court should be satisfied of the Term to carry it to a further Day, we do agree in *Proviso* be returned *et Admon.* and the Trial then made, the Court is to give, which will be in the 21st. And it is proper for us to give you an intimation as not to expect any further time, or the Jury to be adjourned, do but consider what a Misconduct must be brought up, eighty at least. The Prisoner hath a Privilege to challenge thirty for poverty, forty, and after, for as many as he pleases, so that a great Number must be brought up, for then to be forced to attend here the 21st, and still the Trial to be off, it will be a great Inconvenience and a great Charge, therefore that will be the Day: I will not consider to put it off till any further Time.

*Prisoner.* I beg leave for one Week more, I have a Witness that is come from *Shropshire*, and I can hardly have him here by the 21st.

*L. C. J.* We cannot do it without making an Error in the Process.

*Prisoner.* Is there no other Return for a *Proviso* to be returned?

*L. C. J.* No, there is none but that, and the last Return of the Term, and it is impossible to say him that Day, without doing a manifest Wrong and Injustice to the People of England.

*Prisoner.* My Lord, where a Man's Life is at Stake, if I should not be indulged over till the last Day of the Term, for want of a Witness, I am in danger of my Life. I hope therefore your Lordship will please to delay it accordingly.

*L. C. J.* You have had a great deal of Time already. Time sufficient to bring your Witnesses from *Shropshire*, or any other Place, and we are not to do it. To put you off to the last Day of the Term, is to do a manifest Wrong to the People of England.

*Prisoner.* The Reason why I mention it over and over again, is, because I would not give your Lordship the Trouble to be turned over to another Day, on mentioning your Lordship with Affidavits.

*L. C. J.* Is what you say before us a Matter proper for Consideration, we shall do what is just. It is not proper for you to tell us what we have to do, and to make *Baynes* with us. That is the Day of Trial; it must be on *Wednesday* the 21st. Your Council will tell you it is impossible to comply with your Request, without doing the manifest Injustice in the World. Or else, whether twenty you upon the 21st, or so two, or three, or four Days after, I don't think the Consequence worth disputing; but we can't do it without doing Wrong and Injustice to the People of England.

*Prisoner.* I hope I shall be indulged two or three Days.

*L. C. J.* We can say no more. The Time you have had for Preparation for your Trial we think abundantly sufficient to prepare yourself, therefore we are of Opinion that the Trial go on at that Day, and we order it accordingly.

*Mr. Kestell.* Your Lordship will please to order a Rule for his Wife and Sister to come to him.

*L. C. J.* No, not for his Wife and Sister.

*Prisoner.* My Lord for a single Woman to come thro' the Courts and the Guards, to be examined by herself, it's out of proper, my Lord.

*L. C. J.* You shall have a Rule from the Court for your Wife to come; as for your Sister, we must leave that to the Direction from another Place. We must not be too forward as granting Women to come, we cannot but an Etage occasion'd by a Woman coming thither.

*Mr. Ser. Pargell.* There must be a Rule to bring him up at the Day of his Trial.

*Mr. Kestell.* My Lord, as to having his *Habeas Corpus* ad *Testificandum* for my Lord *North* and *Gore*, and my Lord *Orrey*.

*L. C. J.* You must give Notice, and then name what you please.

*Mr. Hargrave.* By what was said, I did understand, I must certify that though the Rule was made for the Wife only, yet that it might be the Power of the Gentlemen Jailor to permit her Sister to come with her.

*L. C. J.* We pass no Direction concerning it. He will have a Rule from the Court that will be his Direction, which he receives any additional Direction from any other Place, but the Court names his Wife only.

*Mr. Kestell.* There was another thing suggested, that he may have Copies of his Papers that were seized.

*L. C. J.* Give Notice for what you think fit, and move it.

*Die Mercurii 21 die Novembris, 1723.*

THIS Day *Christopher Layer, Esq.* was brought to the Bar, in Custody of the Lieutenant of the Prison, in pursuance of the Rule of Court made for that Purpose, in order to his Trial.

*Cl. of the Co.* *Yo Christopher Layer, now Prisoner at the Bar, shall Men which you shall here called, and presently appears, we are to put between our Sovereign Lord the King and you, upon Trial of your Life and Death.* If you will challenge them, or any of them, your time is at length there as they come to the Book to be sworn, and before they, be sworn.

*Honour Natus, Esq.*

*Mr. Hargrave.* My Lord, we desire that his Irons may be taken off.

*L. C. J.* The Irons must be taken off, we will not stir till the Irons are taken off.

*Prisoner.* I hope, my Lord, that the Irons shall be now taken off.

\* See *Hankin's* Trial, 2<sup>o</sup> 276. and *Reinhold's* Trial, 2<sup>o</sup> 273.

† See the Proceedings against *Fitchard*, 2<sup>o</sup> 222.



*C. J.* They shall be taken off.  
*Hugford.* The poor Man hath been so oppressed by these Chans, he was not able to prepare his Brief. I had it not till late last Night, it is on Sheets of Paper.

*Mr. An. Geo.* What Fault is that? You have had Time enough.  
*Mr. Hugford.* It is the Fault of the Irons, Mr. Attorney, the Brief was brought to me all Elaves of the Clock last Night.

*L. C. J.* It was an Omission; they should have been taken off before they came to the Bar.

*Mr. An. Geo.* There was Direction given for their being taken off before they came to be taken off, I can't tell.

*L. C. J.* Are the Irons taken off?—*Geo. Taylor.* Yes.

*L. C. J.* Go on.

*Cl. of the Cr. Henry Norton, Esq.*

*C. J.* You must call over all the Jury.

*Mr. Hugford.* I thought they would be all called over once, before they are introduced to be sworn.

*Cl. of the Cr.* They have been called over already.

*Mr. Hugford.* When? Not since the Court sat, I am sure. I would know whether the Intention is, that all the Panel be called over before any one of them is sworn, or that the Panel is to be called over but once, and the Jury men sworn as they then appear? What I have observed is, the Clerk calls over the whole Panel first, to see how many appear; and then calls it over again, and swears them as they answer to their Names, if not challenged.

*L. C. J.* What you observe is what hath been done at the *Old-Bar*; that they call them over first; and then they call them over again, and as they appear they are sworn perfectly. But by the Court of the Court here they are called over before the Court is sitting, and they mark those that appear. That is not sufficient; but they are called over again at Court, and then their Appearance and Non-appearance being marked, they do call those that did appear, and as they appear, if there is no Objection to him, he must be sworn.

*Mr. Hugford.* I have observed them to be called over when nobody is by, in civil Cases; but in such a Case as this, a Case of High-Treason, where peremptory Challenge is allowed, it is more Guide to the Prisoner in making his Challenges, to know beforehand who do and who do not appear.

*Mr. Kestley.* My Lord, with Submission, in all criminal Cases, there is no other Method than calling over the Panel according as it is transmitted to Court. This possible several of the Jurors who did not appear at their being called over before the sitting of the Court will now appear, and there, where we pay it, that the whole Panel only be now called over in the Order as it stands, not only those who answered to the Call, but those also who then made Default.

*Mr. An. Geo.* I can't imagine what they mean.

*L. C. J.* This Debate arises from not understanding one another: You have the Direction of the Court; the Panel is to be called over, if any Man doth not appear, his Default is marked and recorded. When any such appear, and he is not challenged, he is to be sworn.

*Mr. Kestley.* I came thro' the Hall just now, and there is such a Crowd that it is almost impossible for any one to hear when they are called.

*Prisoner.* My Lord, I hope they shall be once called over before they come to be sworn; for as to their being called before, that was before I came; it will spend but a little time to read over forty or fifty Names.

*L. C. J.* Call them over. I would not deny any thing that is desired in Reason by or on the Prisoner's Behalf; consider what you are doing; the Prisoner hath had a Copy of the Panel, he hath examined it, and considered who are proper for him to challenge peremptory, and he hath considered who they are that he may challenge with Cause.

*Mr. An. Geo.* I was never done in this World. We have asked our Officer: They sought to call over all the Panel; but if they do not appear, they do call it marked; if they do appear, the Prisoner knows whether he likes them or not.

Therefore, when they come to the Bar, if not challenged they must be sworn.

Consider what this Demand is; we shall be an Hour calling them over the first time, that it may appear to the Prisoner whether they appear or not; then afterwards you are to call them over again, and to have them brought up again when they come to be sworn. But if it ever hath been done, it is if it should be done now, that our Officer tells us it never was done, and why should you insist upon it now? you have had all the Indulgence the Law allows you.

*Prisoner.* I have not had a Copy of the Panel above two Days before.

*Mr. An. Geo.* I have not had the Copy of the Panel above two Days before.

*L. C. J.* You must keep within due and proper Bounds. You are come now to be tried for an Offence you are charged withal; but you are not warning and challenge every body else; you have no Right to do it. If in proper form it appears you have been ill used, the Court will do you Justice, and punish those that have been guilty of any Mischivance.

*Mr. Ser. Philip.* My Lord, if they have any Objection to the Jury, they are to challenge them peremptory, when the Jury come to be sworn. Thus in these times; they are not to entertain the Court with Speeches before.

*L. C. J.* No, it is not proper.

Consider how unreasonable it is for the Prisoner to arraign somebody's Mischivance without naming him. But in this Method he is intimating Objections, which we can't examine whether they are true or false, or punish to captivate People; and it may be, mislead them in the Trial of the Cause.

*Mr. Kestley.* As I came in, I observed that all the Avenues to the Court are barricaded up, and only a narrow Place left on the South Steps, and a Guard kept there to keep out when they don't think it to let in.

*Mr. An. Geo.* I know nothing of it, and I dare say nobody will give any Countenance to hindering either Jury-men or Witnesses coming into Court, when their Attendance is required here.

*Mr. Kestley.* I had much ado to get in myself.

*L. C. J.* There shall be due Care taken, that any of the Jury that appear, we will order Way to be made for them.

*Mr. Hugford.* My Lord, I will take up my very little of your Time in this Matter; I find I was not understood before, that which I intended for is, that the Panel be read thus once in the Prisoner's Presence, to the effect, that the Prisoner be sworn, before any Juror-man is sworn. The Prisoner hath a Right to challenge thirty-five peremptory, at without assigning any Cause at all. Now, my Lord, this is a Favour, an Indulgence granted to him by Law, and he is therefore entitled to it in Justice. It is of great Use to the Prisoner, in order to enjoy the true Benefit of this Indulgence that the Law gives him, that he knows who doth and who doth not appear; for this Reason perhaps, if he did know that such an one appears he will take him, and if he knows that such an one appears he will challenge him. And if he knows that such an one, who perhaps stands lower in the Panel, and of whom he has a good Opinion for being an honest Man, will appear, he will challenge as many as he can of the preceding Persons, in order to have him, that honest Man, of his Jury. And as so the Time for the reading of the Panel will take us, (though by the way it might have been over by this time) I am for your Lordship and the Court will not regard what Proportion of Time you spare us, to let the Prisoner enjoy the Benefit of the Law in this Case, and to have a full Enjoyment of the Indulgence of the Act of Parliament in this full Latitude, that he may know and judge (as far as the Law hath enabled him), who is to pass upon him as to his Life and Death. I beg therefore, my Lord, that the whole Panel may be called over once before the Prisoner is put to challenge.

*Prisoner.* My Lord, What we humbly move for is what is every Day done at the *Old-Bar*, that they may be once called over.

All I desire is what is done there, and I, the same Reason ought to be done here in the same Case when a Man's Life is concerned. I humbly move that they may be called over.

*L. C. J.* We shall grudge no Time to do the King and you Justice, it is dangerous to make a Precedent, an Innovation: But if you desire it, I don't find the King's Council object to it.

[*Call over the Panel.*]

You don't expect all should be brought into Court, but only to know if they do appear?—*Mr. Hugford* and *Mr. Kestley.* No, no.

*L. C. J.* The Prisoner hath a Solicitor; let somebody go down upon the Steps, the Solicitor be present, and then he will hear who do and who do not appear.

*Mr. Hugford.* We humbly thank your Lordship, this is a real Indulgence, and we humbly thank your Lordship for it.

[*Cl. of the Cr. Call over the Panel.*]

You the Prisoner at the Bar, then Men which, *Geo. Taylor.* Yes, my Lord, if your Lordship please to say all the Solicitors comes in, because he went out to object who did appear, and who did not appear.

*Cl. of the Cr. Henry Norton.* Here you see *Parsons* a Year Freehold and Copyhold in the County of Essex.

*Norton.* I have no Freehold, only Copyhold. [Then he was for *John Taylor*.] [At the same Question, as were all the others who appeared, before they were either challenged or sworn.]

*Prisoner.* Challenge him,—*Chall. Fr. J.*

*Prisoner.* I challenge him,—*Thomas Clark.*

*Prisoner.* I don't challenge him.

*Crier.* Thomas Clark.

[Sworn.]

*Henry Longbottom.*

*Prisoner.* I say, I think his Name is wrong spelt.

*Mr. Ser. Geo.* We are not now upon Exceptions for Mis-spelling. If his Name is written as he is usually called, it is right.

*Prisoner.* He says his Name is with an *o*, and it is written here with an *a*.

*L. C. J.* Doth the Copy delivered to you agree with the Panel? it is at desk, as long as it hath the fine Sound it will do.

*Prisoner.* With humble Submission in the Case of *Francis* there it was allowed.

*Mr. Hugford.* My Lord, it is not the same Sound *Longbottom* and *Longbottom*, and in *Francis's* Case the Difference of a Letter was allowed to be a good Exception.

*L. C. J.* You are by Law to have a Copy of the Panel delivered to you; if that Panel varies from the other, it is a just Exception; but if you object against a Jury-man because his Name is not right spelt, and that hath the same Pronunciation, and he may be called sometimes one and sometimes another, it is well enough.

*Mr. Kestley.* My Lord, as to this Objection, whether the *Longbottom* is right, or the *Longbottom*, whether it is with an *a* or an *o*—

*Cl. of the Cr.* You mistake, it is *Longbottom*, and not *Longbottom*.

*Prisoner.* The list should be an *O* instead of an *A*, *Longbottom*.

*L. C. J.* Therefore we will ask the Gentleman how his Name is usually pronounced, whether it is not pronounced sometimes *Longbottom* as well as *Longbottom*?

*Mr. Longbottom.* Yes, my Lord, it is.

*Pr. J.* He says he spells his Name with an *O*, and here it is with an *A*, *Longbottom*. I always spell my Name with an *O*, but my Letters are generally directed to me with an *A*.

*Mr. Hugford.* He hath a Copy of the Panel delivered him by virtue of the Act of Parliament; if the Copy be not a true Copy, it is not right according to the Direction of the Act.

*L. C. J.* Right.

*Mr. Hugford.* Now the Panel which the Prisoner hath is spelt with an *A*, and the Panel of which this is a pretended Copy, is, I take it, spelt with an *O*.

*Cl. of the Cr.* No, they are both spelt alike.

*L. C. J.* You know it, Gentleman, as well as can be. Don't let us spend Time where there is nothing in it, we will hear what is proper for our Consideration.

Suppose a Man is called and with sometimes *Longbottom*, and sometimes *Longbottom*; and suppose he was called by either of these Names, may he not therefore be called by one as well as the other? Is that an Objection to let him write with an *O*, but People write to him with an *A*? there is nothing at all in it.

*Prisoner.* Then I challenge him—*Cl. of the Cr. Henry Norton.*

*Prisoner.* I challenge him—*Cl. of the Cr. Richard Sars.*

*Prisoner.*



*Prisoner.* I challenge him.  
*Cl. of the Cr. John Wrentham.*—*Prisoner.* I challenge him.  
*Cl. of the Cr. John Andrews.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.  
*Cl. of the Cr. Thomas Waterhouse, Stephen Hoff, John Thorneycroft,*  
*Christopher Bailey.* Challenged by the Prisoner. [Sworn.  
*Cl. of the Cr. Isaac Pater.*  
*Cl. of the Cr. William Lord.*—*Prisoner.* I challenge him. [Sworn.  
*Cl. of the Cr. Herchab Hagen.* [Sworn.  
*Cl. of the Cr. Thomas Hetherly, jun.*—*Prisoner.* I challenge him.  
*Cl. of the Cr. Richard Weygill.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.  
*Mr. Kestley.* Mr. Attorney is pleased to challenge him for the King; we humbly insist on it, that Mr. Attorney is to save his Cause of Challenge immediately. I own it has been otherwise as one or two late Instances; but I submit it, if that Practice should prevail, whether the Act of Parliament made on that Occasion would not be in Effect thereby abrogated. The Act is the 23<sup>rd</sup> Ed. I. and the Words of it are: "If they" "that sue for the King will challenge any Juror, they shall assign of their Challenge a Cause certain, and the Truth of the same shall be" "inquired of according to the Custom of the Court." Now, my Lord, I beg leave to observe, upon this Point there are a hundred and odd Persons; if Mr. Attorney is not obliged to show his Cause of Challenge, when he challenges for the King, all the Panel is gone through, this Act of Parliament will be of no Validity whatsoever. If there had been but a few returned (twenty-four, or such a Number) then there might have been some Colour for going through the Panel before there was any Cause assigned for the Challenge; but since this modern Practice has obtained so much as numerous a Panel, if they are not obliged to show Cause till the Panel is gone through, that Law is entirely a dead Letter, and of no Significance.  
*L. C. J.* You know your Objection is of no Validity; you cite an Act of Parliament, and you know the contrary Practice is against you.  
*Mr. Just. Bay.* Though the Council for the King must assign their Cause of Challenge, yet they are not obliged to do it till the Panel is gone thro', and the Jury-men returned, who are not challenged, are all sworn. This is a Rule laid down in *Hal's Pleas of the Crown*, and has been always the constant Practice in Cases of this kind.  
*Mr. Hungerford.* What your Lordship directed in the last Case is certainly precluded; but I would propose it as a Consentance that the Attorney should, as he is every ways entitled, have the Precedence, and might challenge first, and then we will determine after him.  
*L. C. J.* No, we must not do that.  
*Cl. of the Cr. John Lewis.* [Sworn.  
*Cl. of the Cr. John Henry.* Set aside sue want of Freehold. [Sworn.  
*Cl. of the Cr. Thomas Pratt.*  
*Cl. of the Cr. Richard Rogers.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.  
*Cl. of the Cr. Edward Pinder, Thomas Bland, William Spilshin,*  
*Alexander Waller, Thomas Rawls, John English, Joseph Conner, George Frye.* Challenged by the Prisoner.  
*Cl. of the Cr. William Safford.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.  
*Cl. of the Cr. John Crabb.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.  
*Cl. of the Cr. Thomas Henslet.*—*Prisoner.* I challenge him.  
*Mr. Just. Bayly.* I don't know this Method of proceeding: If the Prisoner makes any Challenge, it must be before he comes to the Book to be sworn; but when he comes to lay his Hand upon the Book, he is too late to challenge them.  
*Prisoner.* Whenever I make a full Stop and don't say I challenge, you do.  
*Mr. At. Gen.* My Lord, the Prisoner is to declare whether he challenges or not; afterwards the King's Council are to declare whether they challenge for the King, and the Jury-men is not to put his hand on the Book till then.  
*L. C. J.* He ought not to put his Hand on the Book till he is allowed a Jury-man; that if the King or the Prisoner challenge him, they may do it before he lay his Hand on the Book.  
*Cl. of the Cr. Joseph Capen.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.  
*Mr. Hungerford.* More have been challenged for the King, than has been known in any public Trial in my Remembrance.  
*Mr. At. Gen.* I am surprised at this Observation, when the King has an undoubted Right of challenging whom he pleases, without shewing Cause till the Panel is gone through.  
*L. C. J.* It is always done.  
*Cl. of the Cr. John Clarke.*—*Prisoner.* I challenge him.  
*Cl. of the Cr. William Chandler.* Set aside sue want of Freehold.  
*Cl. of the Cr. William Barrett.*—*Prisoner.* I challenge him.  
*Cl. of the Cr. Francis Ayton, Gent.* [Sworn.  
*Cl. of the Cr. George Bailey, John Wicker, Thomas Ruggie.* Chal-  
 lenged by the Prisoner. [The Prisoner puts to the Jury-men.]  
*Mr. At. Gen.* My Lord, it hath been intimated to the Prisoner once already, that he ought to propose his Questions to the Court.  
*L. C. J.* You are to ask no Questions yourself, if you will tell us the Questions, we will propose it.  
*Prisoner.* Only to know how he spells his Name.  
*Cl. of the Cr. William May, Arden Lane.* Challenged by the Prisoner.  
*Mr. Hungerford.* My Lord, it will be of some little Use to know for certainty how many he hath challenged, if they differ here in the Computation.  
*Cl. of the Cr. Henry.* He hath challenged twenty-eight prematurely.  
*Cl. of the Cr. Nathaniel Weygill.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.

*Cl. of the Cr. Benjamin Redwood.*  
*Prisoner.* My Lord, I desire he may be asked whether he doth affirm something under the King, or on the Forth.  
*L. C. J.* If it was of any Service to you it should be done; but it is, it is no Objection.  
*Mr. Kestley.* The Objection was once made in the Case of *Sir John Perceval*. It was recommended to the King's Council.  
*L. C. J.* I deny it. It was not recommended to the King's Council, but the King's Council did not insist upon it.  
*Mr. Just. Forgive Alas.* The Court in that Case gave their Opinion that to be a Servant to the King is no good Cause of Challenge; my Lord Chief Justice Hale and Tracy were present, and Mr. Justice Gould did not insist on the Jury-man to be challenged, but waved Matter without any Recommendation of the Court.  
*Mr. Kestley.* I know no other ways, than if Mr. Attorney will do as it was done in that Case.  
*Mr. At. Gen.* I know nothing of the Fact.  
*L. C. J.* What do you do, do you challenge him or no?  
*Prisoner.* I challenge him.  
*Cl. of the Cr. Alexander Marshall, Thomas Salp.* Challenged by the Prisoner.  
*Cl. of the Cr. John Aldridge.*  
*Mr. Hungerford.* My Lord, he is searching for a Paper; he challenges for Cause.  
*Prisoner.* My Lord, when I have to offer it, that this Mr. Aldridge hath been heard to say, before he came here, that I ought to be taken and I apprehend that is good Cause for challenging him, if I please.  
 [David Aldridge called.]  
*Gent.* You shall trust Andrew make, Sir.  
*Mr. Hungerford.* Do you know Mr. Aldridge?—*Martin.* Yes.  
*Mr. Hungerford.* What have you heard him declare concerning Prisoner at the Bar?  
*Martin.* I heard him in Conversation say, that he hoped he should hang, for he believed he was Guilty.  
*Mr. Hungerford.* Then Objection here is right. [Mr. Aldridge does not return.]  
*Cl. of the Cr. Robert Walter.*  
*Prisoner.* I challenge him.  
*Cl. of the Cr. William Nicholas.* [Sworn.  
*Prisoner.* My Lord, I have very near all my Challenges; I think they may go on as they are called, if Mr. Attorney will challenge so many.  
*Mr. At. Gen.* You may go on your own way, I shall make no bargain with you.  
*Mr. Kestley.* We don't offer any Bargain, but only in Expediency save the Time of the Court.  
*Cl. of the Cr. Nicholas Freeman.*—*Prisoner.* I challenge him.  
*Cl. of the Cr. Christopher Hill.* [Sworn.  
*Cl. of the Cr. Stephen West.*  
*Prisoner.* I think I have done all my Challenges.  
*Cl. of the Cr.* You have two more.  
*Prisoner.* Let them take them then as they come.  
*Mr. At. Gen.* I challenge him for the King.  
*Cl. of the Cr. Richard Arden.*—*Prisoner.* I challenge him.  
*John Bawn,* set aside by Consent, by Reason of Infirmary.  
*Cl. of the Cr. Robert Barrow.* [Sworn.  
*Cl. of the Cr. Leonard Burt.*  
*Prisoner.* I don't challenge him.  
*Mr. At. Gen.* I challenge him for the King.  
*Cl. of the Cr. William Safford.*  
*Prisoner.* My Lord, I have the same Objection to this Gentleman as to the other; he hath declared his Opinion before-hand, and that he will make a Sacrifice of me.  
*L. C. J.* Call your Witnes.  
 [Mr. Martin sworn.]  
*Mr. Kestley.* Mr. Martin, do you know William Safford of Ransford?  
*Martin.* Yes.  
*Mr. Kestley.* Have you had any Discourse with him about the Prisoner at the Bar?  
*Martin.* He said, before he was summoned on the Jury, that if he were one of the Jury he would be for hanging of him. [Set aside.  
*Cl. of the Cr. Thomas Waters.*  
*Prisoner.* Sir, I apprehend I have challenged thirty-five.  
*Cl. of the Cr.* You have one more.  
*Prisoner.* I will challenge no more, let them go on.  
*Cl. of the Cr. Thomas Waters, Richard Gray.* [Sworn.  
*William Whately.*  
*Mr. Hungerford.* I hope that what I am going to offer is proper. There is some little doubt how far he is gone in his Challenges, it is said he hath one more, if the Court would indulge us so far as to let the Prisoner challenged be called over.  
*Cl. of the Cr.* It is impossible that we should mistake.  
*Mr. Hungerford.* You say he hath one more?—*Cl. of the Cr. Ye.*  
*Cl. of the Cr. William Whately.* [Sworn.  
 Then the twelve Jurors who were sworn were counted, and their Names were as follow:—  
*Thomas Clark, Gent.* Thomas Pratt, Gent. Robert Bernard, Gent.  
*Henry Power, Gent.* Francis Ayton, Gent. Thomas Henslet, Gent.  
*Herchab Hagen, Gent.* William Nicholas, Esq. Richard Gray, Gent.  
*John Lewis, Gent.* Christopher Hill, Gent. William Whately, Gent.  
*Cl. of the Cr. Gryer,* make Proclamation.  
*Gryer.* O yes! If any one can inform, &c.  
*Cl. of the Cr. Christopher Layer,* Hold up your Hand. Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause.  
 He finds indicted by the Name of Christopher Layer, late of the Parish of St. Andrew's, Haversham, in the County of Middlebury, Esq. For that he did unlawfully and feloniously take and carry away the Goods and Chattels of the said God and the Country, which Country you are. Your Charge is to enquire whether he be guilty of this High Treason, in Manner and Form as



be found guilty, or Not Guilty. If you find him Guilty, you shall execute what Goods or Chattels, Lands or Tenements he had, at the Time of the said High-Treason committed, or at any Time since. If you find him Not Guilty, you shall execute whether he was found. If you find that he did for it, you shall execute of his Goods and Chattels, as if you had found him Guilty. If you find him Not Guilty, and that he did not for it, he, his, and no more, and hear your Justice.

*Mr. Pryn.* May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against the Prisoner for High-Treason. That he did treason first, That he being a subject or adherent Majesty King George, but not having the Fear of God in his Heart, nor considering the Duty of his Allegiance, as a Faith-Trustor, against his Majesty, King, Lawful, and undoubted Lord, contriving and to the utter of his Power, to change, alter and subvert the Government of this Kingdom, lawfully and happily established under his present Majesty, and to deprive his said Majesty of his Title, Honour, Royal Estate, and Government of this Kingdom; and to advance to the Crown and Government of this Realm, the Person in the Life of the late King James II. pretended to be Prince of Wales, and after the Death of the said King James pretending to be, and taking upon himself the Sole and Title of King of England, by the Name of James III. did upon the twenty-fifth Day of August, in the ninth Year of his present Majesty's Reign, and at several other Days and Times, at Leyton-Smead, in the County of Essex, firstly, maliciously, and criminaly, compass, imagine, and contrive, and plot, and set on foot Sovereign Lord King George, from his said Majesty, and Government, and the said King to kill and bring to utter Death.

The Indictment further saith, That he the said Christopher Layer, to pervert and bring to Effect his Treason and traitorous Purposes, on the said twenty-fifth Day of August, and at several other Days and Times, at Leyton-Smead aforesaid, together with divers other false Traitors, to the Jury unknown, did firstly, maliciously, and traitorously, compass, conspire and agree, to move and stir up an Insurrection and Rebellion in this Kingdom, against our said Sovereign Lord the King. The Indictment further saith, That he the said Christopher Layer, to pervert and complete his Treason and traitorous Purposes, on the said twenty-fifth Day of August, at Leyton-Smead aforesaid, with Force and Arms, did firstly, maliciously, and traitorously publish a seditious and traitorous discourse, and treasonous Writing, containing insult, and purporting to be, an Exhortation and Promise of Rewards to the Subject-Subjects and Majesty, to conspire and excite them to take up Arms and levy War against our said Sovereign King George.

The Indictment further saith, That the said Christopher Layer, together with other false Traitors to the Jury unknown, to complete and bring to Effect his traitorous Purposes, on the said twenty-fifth Day of August, at Leyton-Smead aforesaid, with Force and Arms, did firstly, maliciously, and traitorously move, conspire and agree, to exalt to the Crown and Royal Dignity of this Realm the Person in the Life of the late King James II. pretended to be Prince of Wales, by means of an armed Force and Troops of Soldiers, for that Purpose to be raised and levied.

The Indictment further saith, That the said Christopher Layer, to pervert his said Treason, on the said twenty-fifth Day of August, at Leyton-Smead aforesaid, maliciously and traitorously did raise, levy, and retain several Men, to the Jury unknown, so take up Arms and levy War against this Kingdom, against our said Sovereign Lord the King.

That the said Christopher Layer, to pervert his traitorous Purposes, on the said twenty-fifth Day of August, at Leyton-Smead aforesaid, together with divers other false Traitors, to the Jury unknown, did firstly, maliciously, and traitorously move, conspire and agree, to take, seize, imprison and detain in Custody the sacred Person of our said Sovereign Lord the King, against the Duty of his Allegiance, against the Peace to the Kingdom and Dignity, and against the Form of the Statute in that Case made and provided. To this Indictment the Prisoner hath pleaded, Not Guilty.

*Mr. Ser. Pryn.* May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, Mr. Layer, now is to be tried before you, for a wicked and detestable Conspiracy against the Person of his Majesty, and against his Government; and this in favour of an attainted and injured Prisoner; a Prisoner whom the Prisoner himself has abused in Words, and ought to have reposed as his Host.

The Indictment charges a Charge of High-Treason against the Prisoner at the Bar, for compassing and intending the deposing the King, and also his Death and Destruction.

The particular Facts laid to prove this treasonous Intention and Intent, and which the Prisoner put in Execution, in order to bring to Effect his traitorous Purposes, are five.

The first is; That the Prisoner, with other Traitors, did conspire, conspire, and agree to raise a general Insurrection and Rebellion in this Nation against his Majesty.

The next; That he did publish a seditious and traitorous Declaration, containing promises, and Promise of Rewards, whereby to excite and stir up his Majesty's Subjects to take up Arms, and to levy War against his Majesty within this Realm.

And, lastly; That he, with other Traitors, conspired, conspired, and agreed, by an armed Force, to seize, and bring the Prisoner to his Majesty's Crown, to the Throne of these Kingdoms, and put him into the Possession of the Government thereof.

That he hath provided, levied, and retained several Persons to take up Arms, and to levy War against his Majesty within this Kingdom, for the executing these traitorous Purposes.

The last Charge Act alleged, and to finish this Conspiracy, is, That he, with other Traitors, conspired, conspired, and agreed to seize upon, and to imprison the sacred Person of his Majesty.

Gentlemen, it is unnecessary, when their Facts are opened to you, to inform you, that as Attorney of this Nature, he has succeeded, would have been the Substitution of the pocket happy Establishment, and the

Vet. L.

Prisoner's Succession, so often confirmed by the Consent of the whole Nation, and the only Security of your religious and civil Rights and Liberties; which would all have been exposed to the Arbitrary Power of a People's Furies, under the Tyranny of the Pretender.

Gentlemen, having laid before you the Nature of the Offence; we (who are Counsel as his Majesty) shall proceed to lay before you the particular Evidence against the Prisoner at the Bar: Gentlemen, we have been so to rehearse as to discover, and shall produce before you, the very Plan itself upon which this Conspiracy proceeded, and which was so put in Execution.

We shall produce the Plan under the Prisoner's own Hand-writing, and three self-writing confirmations to that Plan, and in the Execution thereof, the Plan is a complete Scheme of a treasonable Insurrection, if it may be called complete which tends to our Destruction; for of the several Parts thereof, one of it had been executed, it would have been a total Overthrowing of the Government and Constitution.

But you may observe a Regularity going thro' the whole Scheme.

The Place of Abode, and the Scene where this Conspiracy was first to be put in Execution, was in the City of London, and that in the Plan itself the Day is not mentioned, yet we shall show you, by the Prisoner's own Declaration and Discovery, the Time when it was to be executed, as it was at the breaking up of the Camp of his Majesty's Forces in the Field.

Gentlemen, the Plan contains a List of several Officers, who were appointed to their particular Branches, and which to be supplied with Men designed to be put in the Execution of the Plan; and, as the Conspiracy began to advance part of the Army, these Officers were to be dispatched to several Places, to receive the persons Men, who, to the Number of about two Hundred (towards the Evening of the Day agreed upon for the execution) were to go single out of the Camp, so that their Arms, that they might not have easily put without Observation, and were to be collected together at a Place of Rendezvous appointed to them.

Gentlemen, from the Management of the Conspiracy, and the Means they had taken to carry it on, and the Hopes they had entertained, the Conspirators concluded, they should have that Number of two hundred Men ready in one Day, to be commanded by proper Officers, to make the first Attempt, and the first Stand.

At the Place of Rendezvous they were to be supplied with Muskets ready loaded, and to remove their Arms, which were to be distributed to them a little before the Hour of Nine, at which Hour exactly, they were to march directly to the Tower of London, (as the Plan proposes, and as it is) but not signed and directed where they might expect to be admitted, by the Help and Aid of some of their Friends, the Officers upon the Guard, and when they had entered, they were to shut up the Tower Gates, and seize the Arms.

Their General was to make his Stand in Person at the Royal Exchange at the same time, as is directed by the Plan, and was confided upon, and agreed by the Prisoner himself, they were to attempt to arrest the Persons of several great Men; and although the Plan does not name the Persons, yet the Prisoner hath as plainly said, and from his own Mouth we shall prove, who the particular Persons are, thus intended to be seized.

A Declaration was to be dispatched to excite People to come in to the Rebels, the Gates of the City of London were to be shut up, and Cannon brought down against them: They were then to be a Guard over the Bank; but in the first Place, they were to take out Money sufficient to pay their Men, such as they hoped would appear as their leaders: Their several Orders were to leave the Artillery in the Camp, the Gun in the Prov-Gardes, the Cannon and Ammunition near the Horse-Guards in St. James's Park.

They were the first Operations: But to finish this villainous and execrable Design, at the Time the Tower was seized, and the City in Arms, they were to leave a detachment to seize the Person of his Majesty, and this they designed in their Plan to be, for the securing his Person from the Mob. But our King was so bedeviled to their General at the Tower, and to begin under his Custody. Thus the Life of his Majesty was so in their Power.

After this, there are several other Dispositions of Officers, and other Persons, in order to execute the Plan of the Rebellion: Some were to appear as Turkish Fiddlers, some in Sea-boats, who were to give Arms to the Admirals, some at Greenwich to engage the Watermen, and seize the Magazine and Powder there, and others at other Places.

Gentlemen, you will find in this Plan a Preparation to make an entire Conquest of the Cities of London and Westminster, upon which the Conspirators designed the rebellion. King James would declare for the Pretenders: As it is in the Plan, the Prisoner in the Plan, that as they proceeded here, and found Success, the General should immediately dispatch Messengers into the several Courts and Cities of England, to give Intelligence of their Proceeding and to persuade them, who they looked upon to be in their Interest, so to declare for the Pretenders, and to refuse their respective Councils from their Adherence.

That in the Plan, when the Conspiracy is carried on, and as we shall produce this Plan, which the Prisoner hath supplied himself with, and written with his own Hand, we beg leave to insist upon that, as strong Evidence against the Prisoner, upon the Overt-Acts alleged in the Indictment, of his conspiring and compassing to raise a Rebellion and Insurrection in the Nation, and to seize the King's Person.

Gentlemen, upon this Plan, which the Prisoner at the Bar hath thus furnished himself with, you will find, on the Examination of our Witnesses, that he constantly asked, he declared for, and promoted the Execution of the principal Parts of it.

Gentlemen, the Witnesses we shall call who were engaged with the Prisoner at the Bar, in this Design, are Stephen Lloyd and Matthew Pooking, (which last had been a Sergeant in the Army) with whom the Prisoner conspired, and whom he engaged in this desperate Attempt; and we shall call these other Witnesses to confirm several Circumstances in their Evidence.

Mr. Lloyd is a Person the Prisoner might have reasonable Hopes of engaging in his Service: He had been formerly acquainted with one Dr. Mordaunt, who was a

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play, who (I am unbiassed) was in the Rebellion that broke out in the Beginning of his Majesty's Reign: Mr. Layer having been abroad, and absent for some time, returned into England in April last: Upon his Return, Dr. Morley, his old Acquaintance, met with him, bids him welcome to England, and tells him that an Affair was going on by which he might make his Fortune, and advise him not to go out of England: Thus there was an Intention to sit in Favour of the Pretender, whom he called his King, and he would take care to recommend Mr. Layer to a Person who had a great Part in that Affair.

Mr. Layer having suffered before, and run a great Hazard, was unwilling immediately to enter into any Engagement, but proposed, that if he could have sufficient Encouragement, and what he expected as a Reward, he should be willing to stay. Some time after Dr. Morley introduces Layer to the Pretender at the Bar: The first time they met, I think it was the Beginning of June last, they went to the Pretender's Lodgings, which were then in the upper End of Green-Lane; and he being about to remove his Goods, desired them to go to a Tavern hard by, the Griffin Tavern in Holborn. To this Place the Pretender at the Bar came, where Dr. Morley presented Layer to Mr. Layer, as the Gentleman Dr. Morley had before recommended to him; Mr. Layer received Mr. Layer at that time with great Civility, and tells him, that the Recommendation he had received of Layer from Dr. Morley, made him not to doubt of his Integrity and Ability. Then they entered upon a Consultation as to the carrying on of this Design; Mr. Layer introduced it with representing an Unhappiness in the Nation in general, and how fair an Opportunity there was to bring about a Revolution: But Mr. Layer tells him, that one of the first and principal Steps was to seize upon a General, or other great Man, (which you will observe is one Part of the Scheme) and upon Dr. Morley's Recommendation of him as a fit Man for that Service, Layer proposes to Layer to undertake it. At this time Layer acquainted Layer with the Difficulties he had been in, and that an Affair of this Nature would take up more time before it could be put in Execution, and he could not well engage in it without some further Encouragement, and a Reward in Money, in order that he might live easy and well while he lived here. Upon that, the Pretender at the Bar presented him Supplies of Money for his Subdilection and Expenses, what should be necessary, besides future Rewards; and in pursuance of that Promise, Layer had several Times supplied Layer with Money, to engage him more effectually in this Design, and to support him in it. By these Alliances Layer was prevailed upon, and then agreed to enter into this Conspiracy, and to take upon him his Part therein that should be assigned to him.

Gentlemen, the Pretender did not then make a full Discovery of the Person that was to be seized; but they were to meet again, as they did, about the latter end of June, at the same Tavern: Thus the Pretender disclosed to the Witnesses the particular Person who was designed to be first seized. He acquainted the Witnesses, that the Person he (the Pretender) intended at their former Meeting, and whom he designed the Witness should seize, is the General of the Army, the Earl Gough, and Layer was to find out such other Persons as he could rely upon, for the assisting in, and effecting that Enterprize; whomever Layer agreed. Layer then acquainted him what Steps were already made in the Conspiracy, and that they were to be headed and commanded by a General, who had Wit, and Courage and Religion, and who were supported by a great many Friends, who had full Power and Authority from the Pretender (whom he called King) to do, and who was intended with a Commission as his General, and whose Orders Layer was to obey.

The Pretender and Layer had several other Meetings, some at the Griffin Tavern, and others at the Pretender's own House in Old Southwark Buildings, where the Pretender always encouraged Layer to persevere in the Undertaking, by assuring him that all Things went on well, and that the Design was to hold fast, that it could not probably miscarry. That they should be assisted by a great many Officers, as soon as any Motion was made, and that the common Soldiers would declare upon the first Opportunity; and being asked by Layer, whether they had no Foreign Assistance to depend on if the Pretender ordered, When we begin the Business, we shall not want Relief, if requisite. At one of the Meetings the Pretender revealed to the Witness, that, upon the Rising, the Tower would be delivered up to them, by means of an Officer who was to be upon the Guard there on the Day of Execution; and that the People in the Affair at Southwark would come in to them; who, and all others that should repair to their Party, should have Arms delivered to them; and that the whole Design should be put in Execution at the Breking up of the Camp, which would be the most proper Time for the speaking with the Soldiers in the Army.

But at a Meeting they had, some time in August, at the *Queen's Head Tavern in Great Queen Street, near Lincoln's Inn Fields*, Layer complaining of the Delay in putting their Design in Execution, and representing the Danger of it, and wishing pressing to know his intended General and Commander, the Pretender gave him great Encouragement, from the good Prospect of their Affairs, and the Vigilance of the Noble-Men at the Helm, who would lose no Opportunity, when a convenient Time should offer, and promised the Witness, that he should be preferred to this noble Person in due time, from whom Layer should receive his Orders, or Commission for executing his Part, and then upon his Enterprize.

And accordingly, upon the twenty-fourth Day of August, Mr. Layer writes Layer to ride out of Town with him the next Day to take the Air, which Layer comply'd with; and on the twenty-fifth of August in the Morning, Layer went to the Pretender's House, who appointed Layer to go before, and to stay without a *Myself*.

At that Time the Pretender asked the Witness, whether he mounted with Furniture or Pistol, who answered that he did not, but that he had a Double-Barrel Fowling-Piece, which the Pretender's Servant might carry; the Pretender desired him to get his Piece ready loaded, because he (Layer) should carry something with him, which he would use first for all the World. Layer and the Pretender met without *Adieu* at eleven before Noon, and the Pretender's Servant carried the Gun, and they rode together towards *Essex* in *Essex*, which was the Place they were going to.

Upon the way as they proceeded, Mr. Layer told the Witness, that they were going to the House of the Lord North and Grey, where he would present Layer to his Lordship as a particular Friend of his (the Pretender's). When they came to the Green Alley at *Leppin-Street*, at the Entrance upon *Essex-Forge*, the Pretender said, it might be best to sit at something there, because they should be too late for the Lord North and Grey's Dinner; and accordingly they stop at this House to dine.

Gentlemen, You will hear from the Witness that at this Place, the Pretender and Layer had another Consultation, wherein there was a Representation of the whole Design and Conspiracy. At this *Green-Alley*, in your County, Gentlemen, you will find every particular Part of the Conspiracy, which was to be executed, consisted upon, and agreed upon by them both: The Time and Manner of the Intermittence (the Preparations making for it, the Assistance to be provided and expected from the Army, from many in the City of London, and from the Generality of the Nation, as well then suggested), the Seizing the Earl of Gough at the first Step, and the Surprising the Tower at the second, were discussed in the Plan, by the Help of the Officer upon the Guard; and then they proceeded to consider and approve the road (during and execrable Part of the Plan, which was then eagerly repeated by the Pretender, the making a strong Detachment to Seize on his Majesty's Person.

The Pretender then declared his great Satisfaction, in having engaged the Person of such Courage and Conduct as Mr. Layer, in the Attempt. Seizing the Earl Gough; and likewise named the several other great Men, who he had in the Scheme, whose Persons were to be seized, and of whom he had made up his Collection in pursuance of the Plan; and then presented his Witness to him to bring Matters to bear, that Mr. Layer might observe the safe Direction in apprehending the Persons of some of his Majesty's Ministers, the Lords Treasurer and General, his Majesty's principal Secretaries of State, and Mr. Walpole, left Lord Cadogan of the Treasury.

Their Persons, most immediately intended in his Majesty's Service, were in the first Place to be seized, in order to facilitate the Design, and to make it successful. By this means the Conspirators were to weaken his Majesty's Power of Defending himself, when they had deprived him of his Generals, who was to command and conduct his Army; of his most Secretaries, who were to maintain and carry on his Intelligence; and of the first Commissioner of his Treasury, who was to take Care for his Supply.

At this Place these things were debated and considered between them. Mr. Layer then upon complaint of the long Delay, and trifled that the Affair might be carried on with more Expedition. The Pretender thought no Time to proper as the Breking up of the Camp, when they might be assisted with Soldiers; yet he was willing to hear any Proposal from Mr. Layer, and desired Mr. Layer, that if he could think of any speedy Method, or better Scheme, to let him know it: But the Witness was not capable to propose any way more proper, than what had been agreed upon the Face of the Plan, as it had been explained by the Pretender himself, and therefore Mr. Layer acquiesced therein.

Gentlemen, at that Time, and at the same Place, the *Overt-Act* laid in the Indictment, at publishing the treasonable Writing, was committed; which was a Declaration framed in the Hand-writing of the Pretender, and he published immediately on the first Breking out of the Conspiracy, to excite the King's Subjects to take up Arms, and to enter into a Rebellion against him; and that it might have an Influence on the Army, when the House was seized, it took Notice, that the King's General was seized, and on their Capture.

In this Declaration particular Rewards are promised to the Horse and Foot in the Army; different Allowances are made; to every *Maroon* and *Brigant* three Guineas; two Guineas to every Corporal, and one Guinea to every common Soldier: All had Promise of Encouragement, Favour, and future Reward.

Gentlemen, after this was read, the Pretender put this Declaration up into his Pocket again; and afterwards (as he acquainted the Witness) he himself made an Alteration therein; it containing at first a general invitation to a Revolt, but was not altered in the Name of any particular Person, therefore the Pretender thought fit afterwards to alter it, (as he informed Layer) and to make it in the Name of the Pretender, as King.

Gentlemen, though their Hopes and Expectations were founded on capturing and discharging the Army; I mention it only, as it was their Expectation and Design, without any Impugnation on the Honour or Fidelity of the Gentlemen of the Army: But Persons who undertake an Affair of this Nature, are always forward to perish their Design will be successful.

Thus, Gentlemen, which I have mentioned to you, which will be more fully and particularly given in Evidence upon you, against the Pretender at the Bar, was transacted and committed in the County of *Essex*.

My Lord, this will be Evidence out of most of the *Overt-Acts* alleged in the Indictment in the County of *Essex*; but we shall confirm this Evidence by the Confession of the Pretender, given by two Witnesses, of whose Promise he acknowledged the several Parts which will be charged upon him in the County of *Essex*, by the Testimony of Mr. Layer, and shall make Proof of other *Overt-Acts* in the County of *Essex*: but it was impossible a Design to execute should be confined to one or two particular Places within the same County: Their Consultations must be transferred from Place to Place, as Opportunity offered, and as they thought most conducive to the Pursuit they were engaged in.

But the Facts I have mentioned were transacted, Gentlemen, in your County. After the Pretender and Mr. Layer had finished these Affairs at the *Green Alley*, they went to the House of my Lord North and Grey of *Essex*: They staid there all Night, and dined there the next Day; the Witness was introduced and presented to his Lordship by Layer, and was civilly received and entertained; and the Pretender at the Bar, as he said, Mr. Layer returned home, asked the Witness how he liked his Lordship, and assured Mr. Layer for his Encouragement, that he had greatly recommended him (the Witness) to his Lordship.

The Pretender and Layer met a second Time at the Lord North and Grey's House, where Layer declared he would withdraw himself, if charged with



were not put in Execution, to which *Lepor* replied, They would be sooner put in Execution, than *Lepor* engaged.

Gentlemen, you may perceive, by this Evidence, the Prisoner's Explanation of the whole Scheme, and his Execution of it, so far as was in his Power, though, blessed be God, there, or any further Attempts of this Kind, have not hitherto prevailed.

The Prisoner's next Father, and the next Witness who will be produced against him, is one who had been a Servant in the Army, *Matthew Plasket*. *Plasket* had been formerly acquainted with the Prisoner, and when a Piece of Service, he was made use of to relieve some Goods, when they were taken in Execution at the House where *Lepor* lodged, which was the Beginning of their Acquaintance: thus, with some other Circumstances from others engaged in this Design, induced the Prisoner at the Bar to make Offer to him, as you will hear from the Witness.

In Year 1721, another Person of the same Name, one *James Plasket*, was directed by Mr. *Lepor* to go to this Sergeant *Plasket*, and deliver him a Letter, as that Time, as he said, he did not think it proper to go to the Place himself, but a Day or two after, Mr. *Lepor* came him in *London's-Field*, and takes him aside under a Gate-way near *St. Mary's*: *Lepor* then told *Plasket*, he would inform him of a Matter that would be of great Advantage and Benefit to him; there *Lepor* let him into this Conspiracy, and engaged the Witness in it, not only by Assurance and Promise of Reward, but by actual Reward and Money given him, and to induce and to encourage *Plasket* the more, *Lepor* acquainted him, that there were several Persons of great Estate, who were resolved to rescue themselves and the Nation from the Calamities and Slavery that they then endured, and that they intended to bring about a Revolution, and restore their King the Prisoner; *Plasket* objected, that the Pretender was a Papist; but the Prisoner replied, there was no Difference between a Papist and a Lutheran King, and therefore, that ought to make no Impression upon *Plasket*, to hinder him in joining to bring in a Papist.

The Prisoner enquired of *Plasket*, whether he had not an Acquaintance in the Army with some Officers, and the common soldiers; and then engaged *Plasket* to levy what Persons he could into this Service; and when the Witness said, *Lepor* be knew twenty or thirty Sergeants in the Army, proper Persons to be applied to, the Prisoner gave *Plasket* his Address to make Application to them, and to have them enrolled; and at that Meeting the Prisoner gave the Witness Money for his Encouragement; and as they had several other Meetings after this, to provide and lay down the Direction and Employment given by *Lepor* to the Witness, who to take care to find out their Lodgings, and to make Lists of the Names, and Places of Abode, that they might be ready upon Notice.

The Prisoner not only employed *Plasket* to procure and enroll as many as he could get; but gave him Money for one particular Person, one *Gild*, who had served in the Army, and who was recommended to *Lepor* by *Plasket*, as a Person that had been dishonoured by having been turned out of the Service; *Lepor* himself gave *Plasket* Half a Guinea, for to go to this Person, to engage him in this Conspiracy, which *Plasket* accordingly paid *Gild*; *Lepor* likewise ordered Money at other Times to be given to *Plasket*, and at one Time particularly acquainted him, that the Prisoner had left a Camera with one *Jaffery* a Non-juring Parson, to go to him, who had given *Plasket* but Half a Guinea.

The Prisoner at the Bar, to encourage *Plasket*, acquainted him with the Persons whom *Lepor* expected to join in this Conspiracy, asked him the Witness his Opinion of several; the Witness will tell you the Names of the Persons, and what Answers he gave; particularly that *Lepor* asked him what he thought of the Lord North and Grey for an Officer to be at their Head? The Witness answered, Though he had never served under him, he looked upon his Lordship as a great Man.

They had Meetings at several Times, when *Lepor* informed him, that Things were in a great Forwardness, though it was not yet a Time to put their Design in Execution: but it went on so well, that it could not miscarry; that the Duke of Osnabruck was to come with a single Ship, with four Officers; and that the Design had been discovered to the French Ambassador, who had given Intelligence thereof to his Majesty, or else the Affair had been done before that Time.

This *Plasket* was employed, from Time to Time, to prepare Lists of, and to collect and enroll fit Persons to go on with this Design; and particularly a Number of Sergeants, about twenty-five, being dismissed from the Army, the Prisoner engaged *Plasket* to go immediately to those Persons, and take care to secure them.

Gentlemen, these traitorous Confidants and Transactions were in July and August, and the Witness will acquaint you more fully with the Facts and Particulars. There was one Encouragement which the Prisoner gave to the Witness, which he did not mention to the other; he told *Plasket* there would be an Army of Dutch to come over in Aid of his Majesty, but the Witness should for a Number of Half-pay Officers, especially those of the Name of *Fitzgibbon*, on the Side of his King (the Pretender), that they could not doubt of Success.

Gentlemen, Under these Encouragements and Promises, and with these Rewards, both these Persons, the two Witnesses, were engaged by the Prisoner to enter into, and go on with, this Conspiracy: the Prisoner met them apart from Time to Time; they consented and carried on such Measures as they thought proper to execute the Design, upon the Foot of the Plan, which both were mentioned, and will be produced to you.

After we have produced the Scheme, and likewise examined these two Witnesses, who will give you an Account of the Progress which the Prisoner made in this Treason; we shall give you other plain and evident Proof, which will demonstrate the treasonable Intent of the Prisoner at the Bar, and his Hopes of Success.

We shall prove that the Prisoner had been at Rome, and by his own Confessions, that he had seen the Pretender, and had Conferences with him.

We shall prove that the Prisoner had blank promissory Notes, or Re-

ceipts for Money, issued with the Pretender's own Hand, by the allowed Table of *James Earl*, upon which *Lepor's* Papers, which were removed to him from Rome, and which he has acknowledged were first sent to him, for raising of Money towards the Cause of the Pretender. This is a strong Evidence of the Truth and Credit repaid in him to execute this Conspiracy; that the Prisoner is a Person fully resolved, as the Receipts are in Blank, and the Prisoner had power to raise Money on them, and so to fill them up with such Sum, as he thought proper and necessary.

Gentlemen, on the Foundation of our Witnesses it will appear that Mr. *Lepor* declared he had expected a great Sum of Money in this Affair, and that he has made it in himself, why he had not Money to supply some Demands, because he had delivered to such.

This therefore was to be let full Power to raise Money towards bringing the Pretender to the Throne.

Before their Receipts, he had furnished himself with Lists of the Officers of the Army, in order to know the Situation and Condition of the Army, and to consider what Advantage he could make by any of these in the List: he had provided himself with Lists of the Officers of the Troops, which we expected was to render the Design of fitting the Troop, when the Friend the Officer was on the Guard, more probable and hopeful.

Besides this, we have Letters which will be produced, that passed between one *William Ellis*, an Adherent of the Pretender's at Rome, and Mr. *Lepor*, by the Name of *Fountain*, (a Name he went by) encouraging him to go on with this Design: we have the Cypher, and the Explanation of the Cast Words used in those Letters. In one Letter *Ellis* says, the best Method of carrying on the Manufacture (which is the Instruction) is to go good Workmen, (by which is meant Soldiers) and particularly to gain the Affection of Mrs. *Barbara Smith's*, (by Mrs. *Barbara Smith* is signified the Army) and this would be very agreeable to all concerned, particularly to Mr. *Adler* (which by their Cypher or Key is a Name for the Pretender).

And in another Letter there is particular Mention of Mr. *Lepor's* intended General; you will find in the Letter an Explanation of him, that is, that he, who the Prisoner is his Letter called *Swiss*, and described as a Tenant, though his Name was not then found in the Royal, this *Swiss* believed he would be called *Swiss*, and says he is of the North, a grey-haired man, thin, for whom his friend has a particular Esteem and Value, as a very good Tenant. This is a very plain Description, and this is the Cypher that passed between them, the Explanation you will approve, by the Cyphers that were found among the Prisoner's Papers.

Mr. *Lepor* was not wanting in other Preparations for this Attempt; for he had provided Arms in his own House, more than he could have Occasion for, as a private Subject; he had several Muskets and other Fire-Arms; he had forty or fifty Cartridges, loaded with Baller, ready made up for many Discharges, which should be delivered out to the People who should come in to them; if he had any Use for such a Quantity he will have upon any Occasion.

The Discovery of the Facts made by the Witnesses confirmed the apprehending Mr. *Lepor*, in whole House these Arms were taken to be found.

Mr. *Lepor* was so conscious of his own Guilt, that after he was apprehended, he made his Escape out of the Custody of the Messenger, in whole House he was placed, he offered a great Reward to Whomever to carry him off; this is a Demonstration of his Guilt, from the Conviction of his own Conscience.

Gentlemen, there are some other Matters and Papers which it will be proper to offer to your Consideration, and most of these particular Facts, which I have mentioned, the most material of them, have been confirmed by Mr. *Lepor's* own Confessions, and his Examination upon his Examination before the Lords of the Privy Council. And when we have laid before you this Evidence, as according to my Instructions we shall very fully, I don't doubt but that you will do your Duty as honest Men.

We don't apply to your Zeal, as you are Protestants and Englishmen; but upon the Weight of the Evidence, we shall appeal to your Justice, to your Oaths, and to your Conscience, whether upon the whole Proof to be laid before you, you will not remain fully satisfied, that the Prisoner at the Bar is guilty of the High-Treason whereof he stands indicted, and then that you do find him so.

Mr. *Ad. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am Counsel on the same Side for his Majesty against the Prisoner at the Bar, who stands indicted for High-Treason, in compassing and imagining the Death of the King. The Preservation of the Life of the King is of that great Importance to the Safety and Prosperity of his Subjects, that even Imaginations and Intentions (which are but Acts of the Heart) to take it away, manifested by Overt-Acts, are an Offence of the highest Nature which the Law takes Notice of; but as Imaginations and Intentions of Men are secret, and cannot be discovered but by their Actions, which I have proved of some Fact done in order to carry such Intentions into Execution, to make the Offenders guilty of Treason; therefore as this Indictment sets several Overt-Acts are laid, the first is, that the Prisoner at the Bar proposed, consulted and agreed with divers Persons unknown to the Grand Jury, to raise an Insurrection and Rebellion within this Kingdom against his Majesty, the second, that he published a traitorous Writing, purporting an Substantive Encouragement and Promise of Rewards, to persuade his Majesty's faithful Subjects to take up Arms against him; the third, that he proposed, consulted and agreed to let the Pretender on the Throne armed Forces; the fourth, that he lifted Men to levy War against his King and the Laws, that he proposed, consulted and agreed to raise and support his Majesty's Secret Prison.

Gentlemen of the Jury, you will readily agree with me that nothing can be more dreadful as a true Briton who had any Regard to himself or his Posterity, or Love to his Country, than the fatal Consequences that must have inevitably attended such wicked Designs, had they been carried into Execution with Success: suppose a Rebellion had been only raised, what could any Man have expected from a Rebellion in the Heart of the Kingdom, but Plunder and Rape and Murder, a total Suspension of all Civil Rights, and as long as the Storm had continued, a just but











Mr. *Hangerford*. I urge it thus far: Whatsoever Person is produced in a Court of Justice for a Witness, he must appear to be utterly unconcerned in point of Interest in the Consequence of the Trial. If a Man produced as an Evidence to prove the Debt upon the Defendant, shall, upon being examined upon a *Pledge*, declare that he is to have a part of the Money recovered, and so such a Person shall not be a Witness at all! And is not a Promise of Pardon to the Witness, in Case he convicts the Criminal, a greater Bias than the Witness's having part of the Money recovered? In a Civil Cause the Question is not, whether the Witness be tempted to swear a Truth or a Falshood; but whether the Witness does not appear to be to far concerned in Interest, that he ought not to be examined at all? And therefore I humbly insist that we ought to have an Account, whether the Witness, *Layer*, hath the Promise of a Pardon, or any Reward for that which he is to do here, viz. for the Evidence he is to give against the Prisoner? As to the Consequence of such an Enquiry, it is indifferent to me whether it will enable him from being a Witness absolutely, or go to his Credit only: For if it should come out that he hath such a Promise, we suppose no Jury or Man living will believe him, and that is much the same as if he were not produced; that it seems more agreeable in the Practice in Civil Cases, that he should not be admitted as a Witness at all.

Mr. *Kentley*. Mr. *Justice* mistakes the Words of the Book as I read them; he is pleased to understand them as if all the rest of the Judges differed in Opinion from my Lord Chief Baron *Hale*; but the Book does not say so, but only that some of the other Judges were of Opinion that it did not disable him, but all agreed that it went to his Credit, and that was all I read in the Book; and I would not have offered it otherwise than as it was truly there, upon any Consideration whatsoever; but whether this Question be asked at first or last, so as we have an Answer to it, I am contented.

L. C. J. You for the most you can make of it, that it is an Objection to his Credit; and if it goes to his Credit, must be so to be sworn, and his Credit left to the Jury? He must be examined as a legal Witness; but if this Man, upon Expectation and Promise of a Pardon, comes here to swear that which is not true, and you would ask him to that, he is not obliged to answer it. Nobody is to discredit himself, but to say to be taken to be innocent can't appear otherwise. It is expected that he has a Promise of Pardon: What to do? To give Evidence. Give Evidence! Why should he not? Is he not obliged to it? Suppose he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The most you can say is, he has a Promise of Pardon if he gives Evidence; and can you conclude from thence that he can give no Evidence except a false Evidence? If they who ask the Question insinuate any thing like that, it ought not to have an Answer: But if he hath a Promise of Pardon if he gives a true Evidence, it is no Objection to his being a Witness, or to his Credit.

Pr. *Ans.* My Lord, I will only hope our Objections will thus far prevail, and that we shall come to the Fact.

L. C. J. When he is sworn you shall ask him what Questions you please.

Mr. *Just. Eyre*. The Objection which gives Occasion to insist upon this Question, arises from the absence which the Hopes of Pardon may possibly have upon the Witness; and of this be a Reason for refusing aside a Witness as incapable, no Accomplish who discovers a Conspiracy can ever be allowed to prove it upon Oath, for I believe, no Man ever yet made a Discovery but with the Hopes of Pardon; and a Government is obliged to Honour to grant it, when the Confession appears to be ingenuous and honest: And therefore if the Hope or Promise of Pardon, which is all that can be inferred from a Promise, should be an Objection to the Competency of a Witness, no Government would be safe; for innumerable Conspiracies might be found and carried on with Impunity, when the Persons concerned, from whom alone a full Discovery can be had, are utterly incapable of proving the Fact, though they give all possible Marks of their Sincerity and Truth. They have therefore been always allowed to be Witnesses, and I don't remember that ever any Objection was made to their Competency, till the Case of the King and Gordon, when the Counsel for the Prisoner would have asked the same Question which is now proposed, but the Court did not think it proper, before the Witness was sworn; for as Pardon produced as a Witness can be examined as any Matter which only affects his Credit, and is no Objection to his Competency, till after he is sworn to give Evidence, and has been examined.

Mr. *Just. Prynne*. Mr. *Hangerford* would do well to remember the several Acts of Parliament made to give Encouragement, by a Reward of forty Pounds, for the apprehending and convicting of every false Coiner, Highwayman, and House-breaker; and if a Criminal in those Offences shall come in, and discover and convict two of his Accomplices, he shall be entitled to a Pardon; and by the express Words of the 5th of Queen *Ann*, shall have the Reward of forty Pounds for each House-breaker, and shall also himself be entitled to a Pardon, so that the Parliament thought it proper to give every Man as well as a Pardon to such Discoverers. Yet, ever since the making of those Acts, the Persons so promised and encouraged, have upon their Trials been admitted as good Witnesses even before a Pardon. And indeed there cannot be too great Encouragement given to Criminals to become honest, and to come in and impeach their Accomplices, it being almost impossible fully to discover their secret Considerations, but by some of the Accomplices and Adherers thereto.

The Law thinks there are fit Witnesses, and you will find it in the Book that Mr. *Kentley* hath mentioned, that they were thought fit to make Discoverers of their secret Combustions, I don't say to come in and give false Evidence, but to make a fair Discovery.

Mr. *Hangerford*. My Lord, we submit; we shall ask the Question, whether he hath any such Promise made? Let the Truth come out, and we shall be satisfied.

Mr. *Just. Fortescue*. I was Counsel in the Case of the King and Gordon; and I very well remember the Counsel of the other Side insisted

the Witnesses produced should be asked this Question on a *Pledge*, viz. his Name was *Major*. The Reason the Court gave that it was improper to ask this Question on a *Pledge*, was, that if he had this Privilege, *Major* would be made either to speak the Truth, or to speak a Falshood, and were to give a just and true Evidence, there was no Harm in it; and it was a Promise of Pardon for speaking that which was not true, the Witness was not bound to answer that Question, and consequently it can be of no Use whatsoever; therefore the Witness must be sworn.

[Mr. Stephen Lynch was sworn.]

Mr. *Sol. Gen.* Do you know the Prisoner at the Bar?

Lynch. Yes.

Mr. *Sol. Gen.* How long have you known him?

Lynch. I first knew him about the Month of June last.

Mr. *Sol. Gen.* Pray, give an Account to the Court and Jury by what Means you first became acquainted with him.

Lynch. I became acquainted with him by Dr. *Morphy*. About the Month of April last I came into England from Flanders; at my Arrival in England I met with Dr. *Morphy*, that was my Acquaintance several Years before, who met me, and told me, he had some particular Business to do, and desired me to meet him at *Cope's* Coffee-house in *Graveland*, where I met him; and he told me that several Things were sitting in the Kingdom in order to a Rising, and if I would be of the Party, he would command me to a Gentleman that had the Management of it: I asked Time to consider it; and in two or three Days since I told him that I was inclined to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to, about the Month of June he told me in *Essex*, go with him to his Lodgings, which were at the upper End of *Chancery-lane*, right over against the *White-Friars*.

Mr. *Sol. Gen.* What Lodgings did you go to?

Lynch. The Lodgings of Mr. *Loy*; Mr. *Loy* was at home, and desired us to go on the *Griffin Tavern* in *Holborn*, and he would meet us there; we went, and in a little while Mr. *Loy* came to us; and then Dr. *Morphy* told him that I was the Gentleman he had spoke to him of. Mr. *Loy* was glad of my Acquaintance, and told me that he had such a strong Recommendation of me, that he was fully satisfied in me, and then he asked Dr. *Morphy* about a Rising that was to be in the Kingdom in favour of the Pretender, and that it would be backed by a great many of the Army and the Guards, and several other Gentlemen.

Mr. *Hangerford*. The Over-Act is laid in *Essex*, and here is an Evidence given of an Over-Act in *Midshire*; with Submissions, they give no Evidence of an Over-Act in another County, till they give Evidence of an Over-Act in *Essex*, where the Indictment is laid.

L. C. J. They lay of Matters in the County of *Midshire*, unless they give Evidence of an Over-Act in the County of *Essex*, it signifies nothing.

Mr. *Hangerford*. My Lord, with Submissions, they ought not to be suffered to give Evidence of an Over-Act in *Midshire*, before they give Evidence of an Over-Act in *Essex*; for with him in proving some Over-Act in *Essex* is the only thing which can entitle them to give any Over-Act elsewhere. For by the Method they would go on in, the Jury may be surprised with a Story of the *Griffin Tavern*, and of Mr. *Loy's* other Allegations and Assertions in *Midshire*, which cannot be inquired to him upon this Indictment until some Testimony be proved in *Essex*: I hope therefore the King's Counsel shall receive your Lordship's Directions to go as regularly, to begin to give an Account of the Over-Acts in *Essex*, before they go into another County.

L. C. J. Mr. *Hangerford*, you must give them leave to go on in their own Method, and let them happen in *Midshire*, and afterwards of what happened in *Essex*, and if you dare not trust them on us, but will have your own Method, it would be to put us into Confusion.

Mr. *Sol. Gen.* My Lord, we insist upon it in point of Law, that we are intitled to give Evidence of Over-Acts of the same Species of Treason laid in the Indictment, though done in any County in England, provided we also prove an Over-Act in the County of *Essex*; which we must do, otherwise this will pass for nothing. Mr. *Lynch*, go on, and give my Lord and the Jury an Account of what Mr. *Loy* said, when you went together at the *Griffin Tavern*.

Lynch. The first thing he told me was, That he was very glad to meet me, that he had had a good Recommendation of me from Dr. *Morphy*, as being a Man he could confide in; and beginning his Discourse of an Insurrection in the Kingdom, he told me, that they were back'd with a great many of the Army and the Guards; that there was a great many of the Nobility and Gentry of the Country that would come in to them: He told me then, that he wanted a Man of Reputation that would take upon him the leading of these Persons of Note, as a General, or some other great Man. The Discourse ran all upon the same thing.

Mr. *Sol. Gen.* Recollect as well as you can, the Particulars Mr. *Loy* said relating to this Design?

Lynch. Yes.

Lynch. He told me the general Design of a Revolution in the Kingdom in favour of the Pretender, and that they were back'd by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me he wanted a Man of Reputation, to undertake, with some others, if I were a great Man, as a General or some other great Man: At that Time took upon myself to do it, for that Time we discoursed no more.

Mr. *Sol. Gen.* How long were you together?

Lynch. About half an Hour.

Mr. *Sol. Gen.* When had you the next Meeting?

Lynch. A Day or two afterwards.

Mr. *Sol. Gen.* At what Place?

Lynch. At the same Tavern, the *Griffin Tavern*; when I came there,

I sent a Boy for Mr. *Loy*, as he had ordered me to do when I wanted to see him.

L. C. J. When was your first Meeting?

Lynch. About the Month of June.

L. C. J. And the second Meeting was two or three Days after the first?

Lynch.



**Leach.** Yes, my Lord.

**Mr. Serj. Copley.** At your putting after the first Meeting, what did Mr. Loyer say to you?

**Leach.** Mr. Loyer told me, if I had Occasion to speak to him that I should not come to his Lodgings, but to go to a Tavern and find for him, which I did; I sent a boy for him, and he came to me. Then I told the Earl of Cadogan, and that I should chuse as many Persons as I thought fit who would answer the same Design; and by being the principal Man in the Army, it would discourage the King's Party, and animate the Pretender's Party; which, as I said before, I agreed to undertake, and so to do the utmost of my Endeavour to do it.

**Mr. Serj. Popham.** Was you to do it alone, or was you to have any Assistance?

**Leach.** Yes, I was to have Assistance.

**Mr. Serj. Popham.** What Assistance?

**Leach.** Such that I should chuse such People that I could confide in.

**Mr. Serj. Copley.** Did you undertake it?

**Leach.** Yes, I did undertake it, and to pick upon such Persons as should be proper to assist me in it.

**Mr. Serj. Copley.** Was any thing said at that time relating to any Person who was to have the Conduct of the Design?

**Leach.** He told me that there was some great Man that did not want Wit, Courage or Religion, and was at the Head of this Affair, who would in a proper time give me an Order to effect something further about it.

**Mr. Serj. Copley.** Had you any more Discourse with the Pretender about this Affair?

**Leach.** Yes, we had several Discourses about it.

**Mr. Serj. Copley.** Tell my Lord and the Jury what more Discourse you had, if you can remember.

**Leach.** The chief Part I was to assist was to seize the Earl of Cadogan, with such Gentlemen as I thought proper to answer the end of seizing him.

**Mr. Serj. Copley.** Was there any other Meeting, and when, and how long after?

**Leach.** After that I came to a Tavern in Holborn.

**Mr. Serj. Copley.** How long after?

**Leach.** Some few Days, it was at the Coffee Tavern in Holborn.

**Mr. Serj. Copley.** Who rose with you at the Tavern?

**Leach.** I came to the Tavern and sent for Mr. Loyer.

**Mr. Serj. Copley.** Did he come to you?

**Leach.** Yes, he came to me.

**Mr. Serj. Copley.** What Discourse had you with him at that time?

**Leach.** We had no particular Discourse, but in general we talked about the Unfaithfulness of the Nation, and the fair Opportunity there was to rise.

**Mr. Serj. Copley.** Pray, give an Account of what else passed.

**Leach.** I say, the Discourse that we had at two Meetings before, he repeated, and said, Now is a fair Opportunity, the Unfaithfulness of the People may reach, to bring about a Revolution, since they would be back'd by the Army and the Guards, and several other People. Soon after that we parted.

**Mr. Serj. Copley.** When had you any other Meeting?

**Leach.** Some Meetings we had at Mr. Loyer's House in Southampton-Buildings.

**Mr. Serj. Copley.** How long after?

**Leach.** A few Days only.

**Mr. Serj. Copley.** At the several Meetings at his House, what was the Subject of your Discourse?

**Leach.** It was about the same, about the Rising and Unfaithfulness of the People, and the fair Opportunity of bringing about a Revolution, of the Disaffection of the Army and the Guards.

**Mr. Serj. Copley.** Did he give you any Encouragement?

**Leach.** After I met him at his House in Southampton-Buildings, I told him of my Unfaithfulness; because he had told me at the Beginning, that these things would be soon put in Execution; I told him, if they were delayed, I was afraid they would not succeed. He then animosely me, by telling me that there were no fear of its succeeding; and that I should not be distressed, for there was a great Man, a Man of Wit and Conduct, that was at the Head, and that had the Management of the Scheme: That I should always keep a good Heart, and that Things went on very well.

**Mr. Serj. Copley.** Did he tell you in whose Favour this was to be?

**Leach.** Yes, in favour of the Pretender. He mentioned him by the Name of King.

**Mr. Serj. Copley.** Do you know any thing about his going into the Country?

**Leach.** After I met him at his House, he went into the Country and had sixteen or seventeen Days; at his Return I went to see him, enquiring how successfully I was at the Delay.

**Mr. Serj. Popham.** About what Time was this?

**Leach.** It was about the first of July, and then I told him again how successfully I was at the Delay. To which he answered, Keep a good Heart, all Things go on very well.

**Mr. Serj. Copley.** Had you any Approbations that all was to be done as before, or that you was to have any foreign Assistance?

**Leach.** In my Discourse to him of the Unfaithfulness I was under at the Delay, I asked him if he had any Promise of any Success from any Power Abroad? He told me, if we were made a Beginning, we should not want them; But did insinuate, that we should not want Encouragement from the Court of France.

**Mr. Serj. Copley.** When you expressed your Unfaithfulness at the Delay, what did he say to encourage you?

**Leach.** The Reason he said me was, that things went on very well, and would very soon be put in Execution.

**Mr. Serj. Copley.** In what Manner did you express your Unfaithfulness?

**Leach.** Nothing, but that I was uneasy, and was afraid that things did go wrong.

**Mr. Serj. Copley.** What did you say? Did you say any thing relating to your own Circumstances?

**Leach.** In the Beginning I told Mr. Popham, because it would be a long Story, some five or six Weeks, before I was to be introduced to Mr. Loyer's Company, that I came on my own particular Business, and my

Circumstances would not permit me to be long here at my own Expense. At the Meeting with Mr. Loyer, when I first made this Complaint to him, Mr. Loyer told me I should not want for a small Matter to maintain me in England. Accordingly Mr. Loyer gave me some Money.

**Mr. Serj. Copley.** Do you remember how much that was?

**Leach.** I cannot remember.

**Mr. Serj. Copley.** Did he give you Money at any other Time?

**Leach.** Mr. Loyer gave me some Money the first Time, and afterwards he sent me some Money by Dr. Ashpley.

**Mr. Serj. Popham.** Did he give you any Money at any other Time?

**Leach.** Yes; the last time I was with him I had some.

**Mr. Serj. Copley.** How many times had you Money of him?

**Leach.** Five or six times.

**Mr. Serj. Copley.** Do you know what the same did amount to together?

**Leach.** I can't recollect; but I believe about eight or ten Guineas.

**Mr. Serj. Copley.** What was it given you for?

**Leach.** To keep me in England, and to assist in the intended Design of a Revolution.

**Mr. Serj. Popham.** After you went to him, upon his Return out of the Country, do you remember the Discourse that passed between you then?

**Leach.** Yes! After I came to his House, I expressed my Unfaithfulness at the Delay; upon which he encouraged me, giving me to hope that Things went on very well, and our Design would effectually take Place.

**Mr. Serj. Popham.** Did you ask him any thing about the Army?

**Leach.** I asked him if he had any Encouragement from the Guards and the Army? He told me, Yes, he had; that a great many of the Officers would engage themselves now, being well paid; but he said he had spoke with several Officers of the Guards, who had assured him, that most of the common Soldiers would come in, as soon as we had made a Beginning.

**Mr. Serj. Popham.** Did he mention any thing of the Time?

**Leach.** Yes. When you asked him if he had any Encouragement from the Army, what did he say?

**Leach.** He told me, that he had Encouragement from many of the Officers of the Army; That he had discoursed with several Sergeants of the Guards, who told him that the common Soldiers would be glad, when they had made a Beginning, to come in to them.

**Mr. Serj. Copley.** Did he give you any Reason for this?

**Leach.** Mr. Loyer told me, the Sergeants told him so before they were engaged, and complained of their ill Usage, and bad Usage from the foolish Officers.

**Mr. Serj. Popham.** Was you acquainted with any Time or Day that was fixed?

**Leach.** There was no fixed Time; Mr. Loyer told me, it was to be on the Rising of the Camp; because they could not talk with the Soldiers in well, while they were engaged, as they could afterwards, when they were in their Quarters.

**Mr. Serj. Copley.** Was there any Conclusion of viewing any one's House?

**Leach.** Afterwards in Discourse he told me, that it was fit to go and view the Earl of Cadogan's House, in case it was necessary to seize the said Lord in his House.

**Mr. Serj. Copley.** Where is his House?

**Leach.** In Piccadilly. Accordingly we appointed a Day to go; and I came to his Lodgings, and we took Coats, and away we went; and talking to him about it, he told me, he was very well acquainted with my Lord Cadogan, and had some Business with him, about an Estate which his Lordship was about buying. We went to his House, but my Lord was not to be spoke with, he was not within, I don't remember which, but we were conducted into his House. We viewed the inner Part of the House; afterwards we went into the Garden, we viewed the lower Part of the Garden; then we went out in the Yard, and took a View of the Armes and about the House. I don't remember exactly the Time, but it was that Day that a Soldier should have been shot in Hyde-Park.

**Mr. Serj. Copley.** Had you any Discourse about the Possibility of it?

**Leach.** Yes, that it was easy to be done; if we had but some resolute Gentlemen to stand by us, that it was very feasible to be done.

**Mr. Serj. Copley.** Had you any Talk at that time relating to the Tower?

**Leach.** He told me, the Tower would be immediately surrendered to the Party; on the Day the Plot was to be put in Execution, a certain Officer of the Guards would take upon him to mount the Guards there, who would facilitate the Delivery of the Tower to them.

**Mr. Serj. Copley.** Was there any talk of the Mint?

**Leach.** Yes, afterwards: He said there would be no doubt of the Mint; they would be glad to take the Opportunity to shake off their Constraints; And that they would put Arms into their Hands, according as they repaid to their Party.

**Mr. Serj. Copley.** When did you fix the Prisoner next after the time that you speak of viewing my Lord Cadogan's House?

**Leach.** I saw him at his own House, and at several Taverns in the City; and once he went to me, desiring me to come to his Lodging; accordingly I went, and when I came to his House, I met with a little Paper that was left for me, directing me to go to the Queen's Head Tavern in Great Tower-Street near Lincoln's-Inn-Fields, and to enquire there for one Mr. Popham; which I did, and I was conducted into a Room where the said Mr. Popham was, with Mr. Loyer and another Man, who seemed, by his Cloaths, to be a Sergeant of the Guards. I do not know the Man.

**Mr. Serj. Copley.** What passed then?

**Leach.** We had a little while there, we talked over the Business, and drank good Success to the Enterprise.

**Mr. Serj. Copley.** Your Lordship will please to take Notice, that when he went to Mr. Loyer's Lodging, he found a Letter there, directing him to go to the Queen's Head Tavern, and enquire for one Mr. Popham; that when he came there, Mr. Popham was there, and Mr. Loyer, and another Man.

**Mr. Serj. Popham.** What passed at that time?

**Leach.** Nothing material.

**Mr. Serj. Copley.** You talked about drinking good Success to the Enterprise: What drank that?



*Leach.* We all drank that.

*Mr. At. Gen.* Did the Pretender at the Bar drink it?

*Leach.* Yes, he did. I told the Pretender, when he went out, that I was mighty uneasy at the Delay on this Affair. He told me, I need not be uneasy, for every Thing went on well; and they had a Nobleman at the Helm, who had Authority from the Pretender, and would leave no Oppor- tunity when a fit Time offered.

*Mr. Serj. Pargell.* What did he call the Pretender?

*Leach.* He called him the King. I was uneasy at the Delay, for fear of being discover'd.

*L. G. J.* Was Reason did he give you, why you should not be uneasy? *Leach.* Because their Designs were surely to be put in Execution, and there was a Nobleman at the Helm who would put the Design on Execution, as having full Power and Authority from the King to do as he thought proper.

*L. G. J.* Did you ask who that Nobleman was?

*Leach.* Yes; but he never told me his Name, but said, that I should, in a proper Time, be spoken of to him, and receive my Commission and Orders from him to give my Lord *Georges*.

*Mr. Serj. Pargell.* My Lord, we shall now grant the Prisoner's Coun- sel, with an Account of what happened in *Exeter*; I hope they will not be impatient to hear that. Therefore, pray, acquaint my Lord and the Jury, when I went out of Town with Mr. *Layer*?

*Leach.* My Lord, I was at Mr. *Layer's* House the Day when the Bishop of *Rochester* was sent to the Tower; he said to me, if I would ride abroad with him the next Day to take the Air, I confided in it, and came the next Morning to his House; and Mr. *Layer* asked me if I mounted such Furniture. I told him no; but that I had a double Barrel Fowling-piece, which his Servant would carry, would do as well. He then desired me to go and stay for him without *Adieu*, and get my Gun ready loaded, for he had that about him which he would not lose for any Thing in the World. I went and staid till about ten or eleven o'Clock, when Mr. *Layer* sent me, and gave the Gun to his servant to carry. On the Road he told me, we were going to my Lord *North* and *Grey's*, whom he was very well acquainted with; and that he would recommend me to him as a Friend of his. When we got to the *Green Man*, he told me, we had better go in and dine there, because *Dinner-time* would be over before we could get to my Lord *North* and *Grey's*. We dined there as getting ready, we had several Discourses on the same Subject, Of the Unlawfulness of the Nation, and its Inclination to a Revolution, and how to bring it about; upon which he pulled a Paper out of his Pocket, and gave it me to read the latter Part of it.

*Mr. Serj. Pargell.* Can you remember what it contained?

*Leach.* I remember some Lines of it; which was, in general, to invite the Nation to an Insurrection, and to shake off the Calumnies and Misre- presentations they endured under the present Ministry. And it was mentioned in the first Paper, that the Earl of *Georges* was actually in their Gallery; thereby encouraging the Army to revolt, with an Offer of three Guineas to every Footman and Sergeant, and two Guineas to every Corporal, and one Guinea to every common Soldier, to be paid immediately on their joining the Party, and a Promise of further Pardonment.

*Mr. At. Gen.* Did you read this?

*Leach.* I did, out of the Paper in Mr. *Layer's* Hand.

*Mr. At. Gen.* Do you know whole Hand-writing it was?

*Leach.* According to our Discourse, I thought it might be his writing.

*L. G. J.* But he produced it?

*Leach.* Yes, my Lord, he produced it.

*L. G. J.* You say you imagine, from some Discourse between you, that it was his Hand-writing; what Reason was there in all his Discourse, that induced you to think so?

*Leach.* He talk'd of it as being of his own making; besides, there were several Insurrections, Disturbances, and Executions afterwards. He was very well furnished and only as to me, and said, he could with that he could bring Ministers about it, as that I could have the sole Direction of bringing them to the Ministry, and namely, my Lord *Trentham*, my Lord *Cavender*, and Mr. *Walpole*.

*Mr. At. Gen.* Was there any Discourse about giving the King?

*Leach.* He said, when the Design was put in Execution, the Army would declare in their Favour, and they would find a strong Guard to take care of the King's Person.

*Mr. At. Gen.* How to take care of the King's Person? What was you to do?

*Leach.* Nothing but to secure the King's Person; by what he told me, it was for the Public Good of the Kingdom; that they did not mean, nor had they any Design on the King's Person, but only to keep him in Security from any Insult.

*Mr. At. Gen.* What more pass'd at that Time?

*Leach.* Nothing more in particular.

*Mr. At. Gen.* Had you any talk relating to the Army?

*Leach.* I said before what related to the Army.

*Mr. Serj. Pargell.* Was there any Discourse about a Scheme or Plan?

*Leach.* He told me there was a Scheme laid on that Foot, of which I told you the first Step was to seize the Earl of *Georges*, and then, according as the Army came over, to take care and seize the King's Person; and he thought the proper Time to put this in Execution, would be at the Raising of the Camp in *Hyde-Parc*.

*Mr. Serj. Pargell.* Was there any Objection to be made to this?

*Leach.* No; I made no Objection, only shew'd my Uneasiness at the long Delay.

*Mr. Serj. Pargell.* When you go to expedite your Uneasiness, what did he say?

*Leach.* He told me, if I could think or propose any Thing more proper, that I should do it. After that we rode toward *Exeter*, and went to my Lord *North* and *Grey's*; and there Mr. *Layer* introduced me as his Friend. We staid there all Night, and dined there the next Day. In the Even-

ing we came away, accompanied with some Gentlemen that I do not know; but we talk'd to Mr. *Rev.* the next Morning, of Mr. *L.* House, and Mr. *Layer* told me he had intended not to see him at his particular Demand, and asked me how I stood here.

*Mr. Serj. Pargell.* Did he ask you any Questions? Do you re- member he called his Lordship?

*Leach.* I don't remember any other Name but Mr. *Lord*.

*Mr. Serj. Pargell.* When he asked you the Name of him, and how liked him, did he describe him in any other manner, or only call him *Lord*?

*Leach.* He only call'd him my Lord *North* and *Grey*, he only said how I liked my Lord *North* and *Grey*.

*Mr. Serj. Pargell.* Liked his Lordship, for what?

*Leach.* That was all.

*Mr. Rev.* Had you any Talk with him about the Person that was to have the chief Command?

*Leach.* Yes; but he never named the Person.

*Mr. Wyl.* Had you never any Discourse with him so command the P. that was to seize my Lord *Georges*?

*Leach.* I was to command that Party.

*Mr. Wyl.* Was you any other Time at my Lord *North* and *Grey's*?

*Leach.* Yes; another time I went to my Lord *North* and *Grey's*.

*Mr. Serj. Pargell.* And expell'd to Mr. *Layer's* Uneasiness I was the long Delay, and that I was afraid our Hope would vanish, and him, if things were not soon put in Execution, I would withdraw my Lord *Layer* did me not to be uneasy, Things might perhaps be done in Execution than I imagin'd.

*Mr. Wyl.* Where was that?

*Leach.* At *Exeter*, at my Lord *North* and *Grey's*.

*Mr. Wyl.* Did you come home together?

*Leach.* No; I came home that Night, Mr. *Layer* remained there.

*Mr. Serj. Pargell.* Did you see him some time afterwards?

*Leach.* I met him at his own House, when I expell'd my Uneasiness to myself, he said, I should not be uneasy, for I do not would put in Effect; and bid me get myself ready to execute my Design; because they had Notice the Camp would soon break up, which was the Time design'd to put Things in Execution. And at that time he told me, that the Declaration which he had drawn me at the *Green Man*, had mentioned as particular Persons, but in general the Safety and Public Good of the Kingdom; There was nothing mentioned of the Pretender in it, but he had thought fit to put it now in the Pretender's Name.

*Mr. Serj. Pargell.* Who was you to receive your particular Orders for the executing your Design?

*Leach.* From that Nobleman, who was to act as General in this Affair.

*Mr. Serj. Pargell.* Did you never hear from Mr. *Layer* who that was?

*Leach.* No; I don't recollect he was ever named by Mr. *Layer*; he told me, that the Declaration was afterwards put in the Name of the Pretender.

*Mr. Serj. Pargell.* What was it he recommended you to my Lord *North* and *Grey* for?

*Leach.* He recommended me to him as one of his particular Friends.

*Mr. Serj. Pargell.* What Discourse had you at that Time?

*Leach.* We talk'd sufficiently, we discuss'd nothing of the Rebellion at that Time; He told me he had given the Declaration to a No- juring-Member to get printed, and had given twenty Guineas for the Purpose.

*Mr. At. Gen.* Was you acquainted before with any Lord *North* and *Grey*?

*Leach.* No; he introduced me as one of his Friends.

*Mr. Serj. Pargell.* Did you know when Mr. *Layer* was first taken up?

*Leach.* Yes.

*Mr. Serj. Pargell.* How long before that had you been with him?

*Leach.* I do not recollect the Time. I first became acquainted with Mr. *Layer* about Town.

*Mr. Serj. Pargell.* What pass'd the last time you was with him, before he was taken up? Was there any particular Conference between you?

*Leach.* I told you about the Declaration, and about my Uneasiness, and that he told me Things would succeed sooner than I thought for.

*Mr. Serj. Pargell.* When you express'd your Uneasiness, did he use any Vehementness of Expression, as to what Part he would act?

*Leach.* He told me several Times, when I was to introduce and assist, faith he, Don't you be uneasy; rather than all should fail, I will stir it and be the first to do it.

*Mr. Wyl.* Had you any Conversation about the taking up of any Person?

*Leach.* He only told me at that Time, that if the Nobleman at the Head of Affairs should be taken up, every thing would be crush'd.

*Mr. Serj. Pargell.* That Nobleman was not taken up at that Time then?—*Leach.* No.

*Mr. Serj. Pargell.* What Recommendation had you to my Lord *North* and *Grey*?

*Leach.* Only as a Friend of Mr. *Layer's*, to pass away the Time in Society.

*Mr. Haverford.* I presume they have done with giving the Evidence, which they intend, of any Over-Act in the County of *Exeter*; if they have I would crave the Liberty to observe—

*Mr. Serj. Pargell.* We have not done; if you have any thing to ob- serve, it must be when we have gone through our Evidence.

*L. G. J.* When they have given all their Evidence, then will be your proper Time to object to the Evidence, and to show whether it is competent or so.

*Mr. Haverford.* I do not press to make any Remarks upon their whole Evidence; but if they have given all the Evidence they intend to give of any Over-Act in *Exeter*, for on that depends the Fate of this Gentleman at the Bar, I hope we are now (before they shall be permitted to give Evidence of any further Over-Act of Treason in another County) at Liberty to object, that the Transfusion in *Exeter* is not an Over-Act as all of the High-Treason laid in this Indictment.



Mr. Ser. Gen. We have not done! When we have given our Evidence, it will be proper for them to make their Objections to the Whole.

Mr. Hangerford. I humbly offer it to your Lordship's Consideration, whether it is right and proper to go on in such a Method, and so take up the Time of the Court, when the Gentlemen on the other side say, they are done with giving Evidence as to any Over-Act in the County of Essex.

Mr. Ser. Gen. No; we have not done with that Evidence.

Mr. Kettleby. I don't know whether your Lordship will indulge us to Mr. Wierick a Question or two now.

Mr. Ser. Gen. Propose your Questions, and we will tell you.

Mr. Kettleby. Whether he hath any Offer of Pardon proposed to him to induce him to give Evidence against the Prisoner at the Bar; which if he should, we apprehend, will invalidate his Evidence.

Mr. Ser. Gen. No, Sir; I have no Promise of Pardon at all: I only do this out of Justice, to make what Reparation I can, and to save the Blood of every People.

Mr. Kettleby. I beg leave to ask him a few more Questions. I think you say the first Time you were introduced into this Gentleman's Company, the Prisoner at the Bar, was at the Griffin-Tavern in Holborn, and that he then told you he had great Designs on hand, and that there was a General: That, you say, was the first Time that ever you saw the Prisoner at the Bar. How came you to have that Share of Confidence in a Man that you never saw before?

Mr. Kettleby. I told you I was in Dispute with Dr. Mather a great many Days and Weeks before I saw Mr. Leger; I told you how every Day I saw him, and always discoursed about the Information, and how he told me that he would recommend me to a Man that had the Management of the general Part in this Affair; and I asked every Day when I should be introduced to him: He told me, the Time was not come yet; but when it was a proper Time, he would introduce me.

Mr. Kettleby. I think you give that for a Reason, why you had that Confidence in him, because you had been recommended by one Dr. Mather. How came you to have that mighty Dependence on Dr. Mather?

Mr. Kettleby. Because Dr. Mather and I had been acquainted several Years ago.

Mr. Kettleby. I hope you was not in any wicked Design with Dr. Mather, and in much acquainted, as to recommend you in a Case of Treason.

Mr. Kettleby. There was a common Friendship between us.

Mr. Kettleby. How came he to trust you? Would you have trusted him as a Business of Treason?

Mr. Kettleby. We have been concerned in Affairs together.

Mr. Kettleby. How long was you at the Grass-Alley with Mr. Leger?

Mr. Kettleby. I can't say exactly the Time.

Mr. Kettleby. I don't sit you exactly on a Minute or two; but was you there an Hour, or two, or three Hours?

Mr. Kettleby. I can't say whether we were there an Hour or two; but we had something desired for Dinner, and the Master was discoursed of by us before Dinner.

Mr. Kettleby. When you first alighted from your Horses, what Room was you shown into?

Mr. Kettleby. We were shown into a Room up one Pair of Stairs on the Right Hand, the fifth Room.

Mr. Kettleby. Was it towards the Street, or backwards?

Mr. Kettleby. It looked into the common Road.

Mr. Kettleby. Did you look out of the Window and for a Person of your Acquaintance?

Mr. Kettleby. I saw two Gentlemen, but did not know them.

Mr. Kettleby. Did you not look out of the Window, and say, you saw a Gentleman of your Acquaintance?

Mr. Kettleby. I did not see any Gentleman that I thought I had seen before.

Mr. Kettleby. Did not you go down to those Gentlemen?

Mr. Kettleby. No, I did not go down to them.

Mr. Kettleby. Did not you go down to them?—Mr. Kettleby. No.

Mr. Kettleby. Did not you say so to Mr. Leger, in the Drawer's Presence?—Mr. Kettleby. No.

Mr. Kettleby. Did you not tell me that those Gentlemen were your Acquaintance?

Mr. Kettleby. I told you, those two Gentlemen I had seen before.

Mr. Kettleby. How long were we together at the Grass-Alley? Were the Horses put up, or not?

Mr. Kettleby. I can't tell.

Mr. Kettleby. Was there any thing desired for our Dinner but a Beef-Steak?

Mr. Kettleby. No, nothing else.

Mr. Kettleby. Did not you go down Stairs, pretending you went to those Gentlemen?

Mr. Kettleby. No, I did not tell you I went to those Gentlemen.

Mr. Kettleby. Did not you go down Stairs?

Mr. Kettleby. Yes, I did, and came up again immediately.

Mr. Kettleby. Was not Dinner on Table when you came up again?

Mr. Kettleby. I went down twice before Dinner.

Mr. Kettleby. Then you must consequently leave me in the Room.

Mr. Kettleby. I went down to make Water.

Mr. Kettleby. What did you go down the second time for?

Mr. Kettleby. Out of Curiosity.

Mr. Kettleby. How long did you stay?

Mr. Kettleby. Not both times above two Minutes.

Mr. Kettleby. I was then alone, when you went down?—Mr. Kettleby. Yes.

Mr. Kettleby. Was this Discourse before or after Dinner?

Mr. Kettleby. It was before Dinner.

Mr. Kettleby. When you came up the second time, was not Dinner on the Table?

Mr. Kettleby. It was come up.

Mr. Kettleby. And yet the Discourse we had was before Dinner?

Mr. Kettleby. Yes, it was before Dinner.

Mr. Kettleby. How much Time ought we spend before Dinner, half an hour or an Hour?

Mr. Kettleby. I don't remember, but it was a good while.

Prisoner. Was not the double-barrel Gun in the Room?

Mr. Kettleby. I don't know whether it was there, or whether your Servant had it.

Prisoner. At the Time of Dinner was my Servant, or Drawer, in the Room?

Mr. Kettleby. Neither of them was in the Room.

Prisoner. You say we were a good while, you and I, alone; pray, how long?

Mr. Kettleby. I cannot say positively how long.

Mr. Hangerford. Have you any Copy of that Part of the Paper he gave you to read, and which you read?

Mr. Kettleby. No.

Mr. Hangerford. Was the Whole of it of any Length?

Mr. Kettleby. To the best of my Remembrance it was a common Sheet of Paper.

Mr. Hangerford. Did you read the Whole?

Mr. Kettleby. No; it doubled it down, and gave me the latter Part of it to read.

Mr. Kettleby. Some Things you seem to remember, and some Things you don't remember: Was it printed, or written?

Mr. Kettleby. It was written.

Mr. Kettleby. Did he not mention it to be the Prince of Orange's Declaration?

Mr. Kettleby. No, he did not.

Prisoner. Was not the Paper blotted?

Mr. Kettleby. In this I fear there were two or three Places inscribed.

Mr. Hangerford. My Lord, I think the Gentlemen did say they had not done with their Evidence, with relation to an Over-Act in Essex; if they have not, they will do well to go on now: But we hope they shall not go into Over-Acts committed in any other County, till they make the Whole of their Profits of an Over-Act in Essex.

Mr. Ser. Gen. You have been told, they should proceed in their own Method, and when they have done, you may make what Observations may be of Service to your Client.

Mr. Hangerford. Relations of Fact arising in another County, which have no Relation to the Fact arising in Essex, we hope they shall not go in upon, so much or captivate the Jury, the Court, and the Audience.

Mr. Ser. Gen. Sure every way Thing was like this! It is our Business to give Directions, and we think it not proper to interrupt the King's Counsel, but that they should proceed to their own Method: You shall be heard as long as you please, when you come to make your Observations.

Mr. Ser. Gen. The Prisoner hath a Right to say any thing that is proper to the Court and the Jury, in his Defence, but he must say it openly; he is not to talk privately with the Jury, tho' I am sure they are Gentlemen of so great Worth and Honour as not to be influenced.

Mr. Kettleby. I don't think by the Jury won't be influenced; but he talks to his Counsel behind, that the Jury may easily hear every Word he says.

Mr. Ser. Gen. He must not speak to lead.

Mr. Ser. Gen. I just now heard him say, it was strange to go on with Evidence that would not be to the Purpose. I heard him, as I sit here; let him deny it if he can.

Mr. Ser. Gen. I hope you will not offer any thing of that Kind, Mr. Leger: You have a Right to discourse with your Counsel, but you must do it in such a Manner as the Jury may not hear.

Mr. Hangerford. Indeed my Lord, he shall have no Encouragement from us for any such Conduct.

[Mr. Hangerford speaks twice.]

Mr. Ser. Gen. Tell my Lord and the Jury, whether you know the Prisoner at the Bar.

Prisoner. Yes, I do know him.

Mr. Ser. Gen. Will you tell my Lord and the Jury, upon what Account, and by what Means, you first became acquainted?

Prisoner. One Major Barnwell brought me first acquainted with Mr. Leger; he had an Execution in his House in Great Queen-Street, and this Major Barnwell came to me, and desired me to get a Couple of Grenadiers.

Prisoner. I brought down two, we went to Mr. Leger's House, and his Clerk bid us sit at the Back-door, and the Grenadiers turned the Officers out, and Mr. Leger gave them a Crown, and a Glass of Brandy.

Mr. Ser. Gen. When was this?

Prisoner. As near as I can guess, it is going on of five Years.

Mr. Ser. Gen. Tell my Lord and the Jury what Month in this last Year you renewed the Acquaintance, and who brought you to him?

Prisoner. The next Acquaintance I had afterwards, was by Major Barnwell, who was arrested, and he sent me with a Letter to his House, to deliver him to release him.

Mr. Ser. Gen. Do you know any thing of one James Plunkett?

Prisoner. Yes; he came to me from Mr. Leger, in July last, to deliver me to meet him; but how this Counsellor Leger and this James Plunkett came acquainted I don't know.

Mr. Ser. Gen. What was he?

Prisoner. I don't know what he is; he is acquainted with Mr. Leger.

Mr. Ser. Gen. What Profession is he of?

Prisoner. I don't know; nor how he lives, or gets his Bread.

Mr. Ser. Gen. Go on.

Prisoner. Mr. Leger paid the Charges for Major Barnwell, and brought him out of the Marshyons.

Mr. Ser. Gen. How long was this ago?

Prisoner. To the best of my Knowledge four Years ago.

Mr. Ser. Gen. He is paying an Account how he came to be acquainted with Mr. Leger; the first Time was upon the Account of refusing Mr. Leger's Goods; the other Time was by Mr. Leger's releasing Major Barnwell out of the Marshyons, and paying him Debt: Give an Account how you came first acquainted with him.

Prisoner. I being at home, in my own Room—

Mr. Ser. Gen. How long ago?

Prisoner. I believe, as near as I can guess, it was left July.

Mr. Ser. Gen. Give an Account of what happened then.

Prisoner. Now this James Plunkett came into my Room, sat down, and he asked me how I did, and said, he was glad to see me; and he

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asked me, Are you got well acquainted in the Army? Yes, said I, I know a great many in the Army, both Officers and common Soldiers. Do you know, said he, any of the Sergeants of the Guards? I know some of 'em, said I. He brought me out of the Room, because my Wife was there, and then he opened his Mind to me. Said he, Do you know one Mr. Loyer? I had forgot the Gentleman, being so highly acquainted with him, I said, I don't know him. No more, said he, I have appointed a Place for you to meet him at, at the Coffee-House in Pall-mall; and at the End of the Week, Mr. Plaintiff asked me to keep Company with them for the Pretender's Service. I did not go to the Coffee-House, but being in a proper Situation, not having Money for that Purpose. So I did not think proper to go to the Coffee-House, but the Sunday following I went to St. Andrew's Church, and meeting with these Friends, they told me Dr. Seaborn preached there; and so they decry'd me to go and hear him preach there. When Service was over, to the best of my Knowledge, as I was going Home, between a watch and one o'Clock, I met Mr. Loyer accidentally in Ludlow's-fields. Mr. Loyer bid me, he was really a great favour to me, for I did not see him again; said he, is it your Name Plaintiff? Yes, said I. Was there not one with you the last Night, one Tom Plaintiff? Yes, said I. Where did he desire you to meet him? I answered, He desired me to go to the Ludlow's-fields. He said, I will come. Said he, I will come. Do you not know me? Yes, said I, I have the Advantage of you. I ask your Pardon, I don't remember you. Don't you remember one Loyer? said he. Then I said to him, that I knew the Gentleman. Said he, Will you walk on this side? I walked back again towards Little Trenchard, and we shook up the Wall-Side, and all at once came under a great Coach-House Gate. We went in, and in the Gate-Way he told me, said he, I am told that you are a very honest Man, and well-affected to me, said he.

Mr. Rouse. Well-affected, to whom?

Plas. Well-affected to the Pretender. At the same Time we had this Talk, he had not yet mention'd to Tom Plaintiff, that I had seen him: Then he asked me if I knew any of the Sergeants in the Guards? For, said he, I want such old Soldiers as you are yourself, that could discipline a Mob, for we have other Men enough among us; but if we could get some of the best of the old Men, they would be finely rewarded. Now, said I, the Pretender is a Papist. Said he, what Difference is there between a Papist King, and a Lutheran King?

Mr. Rouse. He said he wanted old Soldiers as you; for what?

Plas. He wanted them to discipline a Mob, and to put them in Order. Then we began to reason about the Pretender, Why, said he, we had as good have a Papist for our King as a Lutheran.

Mr. Serj. Chy. What did you object?

Plas. That he was a Papist. Says he, We had as good have a Papist for our King, as to have a Lutheran. I don't know what Difference there is, but in my own, the Nation was enslaved, and the People were obliged to be Slaves. I asked him, Sir, Who is the Pretender of this, that may join us? You say, says he, that Injustice is done to you, you have been Abroad, and others are put over your Head; you have had and found great Hardships. I asked him who promoted this? He said, the Lord North and Grey. Says I, He is a Peer of the Realm. Said he, He is a fine General. And the Earl of Strafford be mentioned.

Mr. Rouse. Who did he say was a fine General?

Plas. He said my Lord North and Grey was a fine General, and said he what I thought of him. I said, I had never been under his Command, but I look'd upon him to be a great Man and one of the Peers of the Realm. And then he mentioned my Lord Strafford, What do you think of him? To which I made the like Answer. And what do you think of General Privilege? I said, I had lately seen him at Chisle, passing by in his Coach, but that he was an old Man, however, Mr. Loyer said he, was a brave General. Then he said me what I thought of General Wolfe? I said, I had heard of his Name.

Mr. Serj. Perg. When he had said my Lord North and Grey was a fine General, and when you said who promoted it, whether did Mr. Loyer tell you what their Design was to do? When Mr. Loyer said you what do you think of this Pretender and the other Person, what were they to do?

Plas. To raise a Rebellion.

Mr. Serj. Perg. Was that said of that Time?

Plas. Not at that Time.

L. C. J. You say he wanted such old Soldiers as you; for what Purpose? You say he wanted them to discipline a Mob, and put it in Order?

Plas. Yes, my Lord.

L. C. J. Did he tell you how many he wanted?

Plas. No, he did not say how many.

Mr. Serj. Chy. Was there any thing said about their Names at that Time?

Plas. Mr. Loyer would have me take a List of their Names, and to enroll them, that they might know where they lodg'd, and where they quarter'd; that so when he wanted them, he might find for them to be in Readiness.

Mr. Serj. Chy. Was there any Number he said you the Names of?

Plas. I said, I knew a great many, and that I could get twenty-five. Said he, you ought to have a List of the Names, where they lodge, that they may be in Readiness for a Call. And said he, This would have gone on some Time ago, only Sambrook made Discovery of it to the French Ambassador, and he wrote to the Regent, and so it was discovered to the King. And said he, The Duke of Devon was to come in one Ship, and General Dillon was another, and they would bring their Numbers with them; and then I thought for that the Army would not oppose them. And when I parted from him, he gave me half a Crown to drink.

Mr. Serj. Chy. What was that to do?

Plas. It was to encourage me. And he said he would send a Messenger to me, and in a Day or two afterwards there came a Messenger from him: I was not at home, but he spoke with my Wife.

Mr. Serj. Chy. Who sent that?

Plas. The Un-juring Minister.

Mr. At. Gen. What was his Name?—Plas. His Name was Jeffery.

Mr. At. Gen. You say, you was not at home the first Time; did he come again?

Plas. Yes.

Mr. At. Gen. How long after?

Plas. A month or five or six Days after.

Mr. At. Gen. Did you feel him?—Plas. Yes, I saw him.

Mr. At. Gen. What paid between you?

Plas. He said he if I knew Mr. Loyer? I told him I did. He said he to the Coffee Tavern in Drury-Lane, where we drank two or three of Wine, which he paid for; after the Non-juring Parton told me he came from Loyer, who gave him his Name, and told me that he was call'd by Mr. Loyer to go to such as I was, who were old Sergeants, to be a Parton against to discipline Citizens, and other Mob in the Country.

Mr. At. Gen. What further paid between you and Mr. Jeffery?

Mr. At. Gen. I beg leave to object to that Question.

Mr. At. Gen. If I don't bring it home to Mr. Loyer, it will be nothing.

L. C. J. Mr. At. Gen. you know that many Times in Discomfort it is necessary to mention Lunatickness, to let in what is material: What was paid between him and Jeffery, don't affect your Charge.

Mr. At. Gen. It is a constant Rule, if a Man speaks of a third Person, Transfactions, it is declared as nothing, and commonly stop'd from being going in Evidence.

L. C. J. If they are in dispute, they will give Evidence in such a Manner as to be understood: by declaring what passed between him and Plaintiff, the Evidence may be the better understood.

Mr. At. Gen. I don't doubt your Lordship's giving Direction right, but I observe that, left sense of the Jury should not take it right.

L. C. J. Let the Evidence be given in such a manner as may be understood, what is introductory goes for nothing, but it is in order to explain the Evidence.

Mr. At. Gen. What paid between you and the Non-juring Parton at the Coffee Tavern?

Plas. He told me of the same Subject, desiring me to get some of the best of the old Men, he said he, he had great many Places to go to besides me with this Evidence, and then we parted. Another time he came to me, he went to an Ale-House, to the Cook and Butch in the Strand, where he gave me half a Guinea, and said, there was a Token; Mr. Loyer had sent me to give me a encouragement.

Mr. Serj. Perg. At that Time that Mr. Loyer said he would send a Messenger to you, did he mention any thing of Money?

Plas. Mr. Loyer said he would send Money by the Messenger to me.

L. C. J. You say he told you, that he would send you Money by the Messenger.

Plas. He told me so.

L. C. J. Afterwards you say, one came to you as from him, and encouraged you, and gave you half a Guinea?

Plas. He did: I am upon my Oath before God and Man, I will say nothing but the Truth.

Mr. Serj. Chy. Did you receive any Message from Jeffery to appoint a Meeting with Mr. Loyer?

Plas. Some Time afterwards I met Mr. Loyer at eight o'Clock, at the Coffee Tavern in Drury-Lane; there was the Landlord and Mr. Loyer, who had two Bottles of Wine, and some Bread and Cheese: He would have had half a Crown, but I told him I could not see, but I drank of the Wine. When he had dispos'd of me about the Affairs, to encourage me he gave me a Crown; I went over Ludlow's-fields, so went home.

Mr. At. Gen. What did he give you the Crown for?

Plas. To encourage me to lift Men for the Pretender.

Mr. At. Gen. Had you any Letter by the Penny-Post?

Plas. That Morning Mr. Loyer was going to Norfolk, Plaintiff told me Mr. Loyer was going out of Town, and would be back to me. I went to Mr. Loyer, and his Harrier were at the Door, he desired me to walk to two Part of Stairs forward, and by the first Taken order'd his Servant to charge his Powder in the Room. Said Mr. Loyer, I have given a Guinea to the Non-juring Minister to give you, to do what Servant you can; and when I am abroad, you may be sure I shall not be idle.

Mr. Rouse. Was any Proposal made to any other Person?

Plas. I brought an old Soldier who had been in the Service many Years.

Mr. Rouse. What was his Name?

Plas. John Child, I brought him, as thinking he might have been Service to them.

L. C. J. What was it Mr. Loyer said when he was going into the Country?

Plas. He told me he would be back there.

Mr. Serj. Perg. What did he desire of you?

Plas. He desired me to see and get what Soldiers I could for him. I came to the Non-juring Minister, and told him I had got twenty-five. Then Mr. Loyer said me, why I did not bring a List of these, that he might know where their Habitations were, and that they might be in Readiness at the Time. I delivered with Mr. Loyer what they would be for Arms? No fear of Arms, said he; Arms will be provided for them. After he returned from the Country to the Town, that Mr. Plaintiff was the first Messenger that was sent to me; he came and told me Mr. Loyer was come to Town, and that the Non-juring Parton sent me a Letter by the Penny-Post, Mr. Child was in my Room and read it, the Contents were, Mr. Loyer is come to Town, and would be very glad to see you. No more, but your humble Servant, William Jefferys. By this I knew his Name.

Mr. At. Gen. By this Letter he told you Mr. Loyer would be glad to see you, did you go to him?

Plas. Yes, I went to him.

Mr. At. Gen. Where? To his own House?

Plas. Yes, to his own House.

Mr. At. Gen. What passed between you and Mr. Loyer at that Time?

Plas. I remember at that Time, when I came to him, he gave me a Guinea with his own Hand.



*Mr. At. Gen.* Who gave it to you?

*Phaulst.* Mr. Loyer, after he came from the Country, gave it me, and recommended Mr. Child to him.

*Mr. Serj. Popham.* When you recommended Mr. Child, what did *Loyer* say to *Phaulst.* He told he had no Business for him.

*Mr. Serj. Popham.* For what Purpose was *Child* recommended to Mr. Loyer?

*Phaulst.* I recommended him as an honest Man, as one that was well-liked, as he befired me.

*Mr. Serj. Popham.* Upon what Account did you recommend him?

*Phaulst.* Upon the Account to be a Pretender's Man.

*Mr. Serj. Popham.* Did you ever receive any Money to give to *Child*?

*Phaulst.* I received half a Guinea from Mr. Loyer to give to Mr. Child.

*Mr. Serj. Popham.* For what Purpose was it?

*Phaulst.* Yes to encourage him in the Service, to be truly to him, and to be a Pretender's Man.

*Mr. Serj. Popham.* By what Name did he call the Pretender?

*Phaulst.* He called him the King.

*Mr. Serj. Popham.* Had you any Talk with him any other Time?

*Phaulst.* The Sunday before he was taken up I was with him, and he was singing and saying, the King was as fine a Shooter as any in Europe.

*Mr. Serj. Popham.* Whom did he mean by the King?

*Phaulst.* The Pretence, that he was a fine Shooter as any in Europe.

*Mr. Serj. Popham.* He said nineteen out of twenty I find, that was fine shooting.

*Mr. At. Gen.* Where was this Discourse?

*Phaulst.* In my own Parlour.

*Mr. At. Gen.* Can you recollect any other Discourse there was at that Time, besides that of shooting?

*Phaulst.* Yes, there was; We talked of their Men that would do Service for their King and Country, should have; he told me, that they, and their Families, were to be for ever taken Care of.

*Mr. Serj. Popham.* Was there any other Promise made to you?

*Phaulst.* There was no Promise, only he was the Man who said, if I would follow his Directions, he would promote me; that he would engage me to great Masters for me; and what I suffered in the Army, he would make me Amends for.

*Mr. Serj. Popham.* Had you any Discourse about the Disposition of the Nation?

*Phaulst.* He said, that most of the Nation was tired with the present Government; and he said that King George was ruling of the Nation.

*Mr. Serj. Popham.* Had you any Talk of any Persons at Court?

*Phaulst.* Yes, he said, what signifies the Government; there were but six or seven men in the House that belonged to King George's Court; that the rest of the Nation would not be run down; for they should be made slaves; and he did not prevent it.

*Mr. At. Gen.* Had you any Discourse any other Time about the Disposition of the Nation?

*Phaulst.* Yes, I do remember that he said, Here is a Dutch Army come in upon this Nation, and then the French Army will come in, and take our Rights and Liberties from us; You will keep a Dutch Army, and it will be to make a War among ourselves.

*Mr. Serj. Popham.* What would he have to cure all this?

*Phaulst.* He told me, that when the Intimidation was, there would be a great many Half Pay-Officers as I knew, that would be on the Pretender's side; and especially that of the Names of *Forgerd*; and I never knew any more about it.

*Mr. At. Gen.* We have done examining this Witness.

*Prisoner.* You say your first Acquaintance with me was in Queen-Street, and that Major Barnwell desired you to assist me, there being an Execution in my House: Was it not so?—*Phaulst.* Yes.

*Prisoner.* At the same time you called me Counsellor Loyer?

*Phaulst.* Yes, I came to your House.

*Prisoner.* Did I employ you?

*Phaulst.* Major Barnwell lent me to get a Couple of Grenadiers, and ordered your Clerk to let them in at the Back-door; and the two Grenadiers, which were confined in the Sney afterwards for it, drove the soldiers out.

*Prisoner.* Was it the Landlord of the House's Goods, or my Goods?

*Phaulst.* I cannot tell; how should I know whether they were yours, or his?

*Prisoner.* You said it was about five Years before I saw you in Lincoln's-Inn?

*Phaulst.* It was when the Army was broke; and I came over from Ireland.

*Prisoner.* Well, you say five Years afterwards I met you in Lincoln's-Inn, and gave you half a Crown to drink. I told you my Lord North was to be General: That my Lord Stanfield was concerned in it?

*Phaulst.* No, you told me they were Pretences of it.

*Prisoner.* Pretences of what?

*Phaulst.* Of this Conspiracy.

*Prisoner.* So you did not know me? nor I did not know you?

*Phaulst.* Yes, you knew me; therefore, Sir, and I, you have an Advantage against me; for I don't know you. Afterwards we met one another by Accident: Sir, you, Don't tell *Phaulst.* you met me.

*Prisoner.* What Pleas will you make?

*Phaulst.* I don't know. However that's not material.

*Prisoner.* Did not you come to my House some time after this, and desire me to lend you thirteen Shillings, upon Account of being Bad in an Action in the *Admiral's* Court?

*Phaulst.* That was two Months after: There was a Soldier which was taken by a *Marshall's* Court Writ.

*Prisoner.* And I lent you thirteen Shillings in order to discharge him?

*Phaulst.* Yes, you did.

*Prisoner.* Did not you afterwards ask me for some Money on Account of Sir Daniel Carroll?—*Phaulst.* No.

*Prisoner.* Did not you make a Devotion on Sir Daniel?

*Phaulst.* No: I told you my Affairs with Sir Daniel. You said you would not meddle yourself, but you would write to him.

*Prisoner.* Did you not bring a Paper, and say, Sir Daniel had agreed to pay you twenty Pounds when he received his Pay?

*Phaulst.* No: I brought no Papers to you.

*Prisoner.* Did not you tell me, it would be the greatest Kindness in the World to you to advance twenty Shillings for you?

*Phaulst.* I never told you in the Cause of my Life.

*Prisoner.* Did you never borrow any Money of me?

*Phaulst.* No: I never borrowed any Money of you, otherwise than to get Meadled for the Pretender.

*Prisoner.* I shall think that you are a little mistaken by and bye.

*Mr. Haverford.* You said you was deceived to Church?

*Phaulst.* Deceived? I said it was out of my Way, when my own Parish Church was nearer.

*Mr. Haverford.* What, do you sit to go to Church?—*Phaulst.* Yes.

*Mr. Kestley.* You say, the first time you saw this *James Plunkett*, he came to you when your Wife was in the Room?

*Phaulst.* The first time I saw him, was, when Mr. Loyer released Major Barnwell out of the *Admiral's* Court.

*Mr. Kestley.* When *James Plunkett* came to your House, he took you by the Arm, and told you, he came from Mr. Loyer, did he tell you that first time, he came from Mr. Loyer?

*Phaulst.* Upon my Oath he did.

*Mr. Kestley.* What Discourse had you the first Time? Did he only ask you to go and meet Mr. Loyer?

*Phaulst.* He came in me, and desired me to meet Mr. Loyer at the *Three Coffee-House* in *Russell's* Court.

*Mr. Kestley.* Did *James Plunkett* talk to you about lifting Men for the Pretender the first time he saw you?

*Phaulst.* No; he only was sent on an Errand from Mr. Loyer.

*Mr. Kestley.* And then you came to the *Non-juring* Parson: The Un-juring Parson, at you call him. What Discourse had you with him?

*Phaulst.* The same Discourse pulled between us about lifting Men.

*Mr. Kestley.* What, the first time you saw *James Plunkett*, and the first time you saw the *Non-juring* Parson?

*Phaulst.* Because he came from Mr. Loyer.

*Mr. Kestley.* So you trusted both of them at first Sight, and talked to them about lifting Men for the Pretender?

*Phaulst.* Yes, both talk'd to me.

*Mr. Kestley.* How many times had this Un-juring Parson been with you, before you knew his Name?

*Phaulst.* He had been with me two or three times; he told me his Name was *Jefferys*, but did not tell me his Christian Name.

*L. C. J.* Did he tell you his Name was *Jefferys* the first time?

*Phaulst.* He told me his Name was *Jefferys*.

*L. C. J.* How long after was it that this Letter was sent to you by Mr. *Jefferys*?

*Phaulst.* It was the time when Mr. Loyer came from the Country.

*L. C. J.* How long ago was that?

*Phaulst.* I believe about ten Months ago: I mean ten Weeks ago.

*Mr. Kestley.* I would not surprise you, I would have you consider you are upon your Oath: Is it ten Months, or ten Weeks?

*Phaulst.* Ten Weeks.

*Mr. Kestley.* How came you to remember the Contents of the Letter so exactly?—*Phaulst.* I heard it repeated over.

*Mr. Kestley.* Pray, repeat it over again.

*Phaulst.* Mr. Plunkett, Mr. Loyer is come to Town: I should be very glad to see you. So I beg your humble Servant, William Jefferys.

*Mr. Kestley.* Where is that Letter?

*Phaulst.* I don't know, the Letter is lost.

*Mr. Kestley.* Do you remember how long 'tis since this Letter was lost?

*Phaulst.* Why, I missed it about two Months ago, or more.

*Mr. Kestley.* Two Months ago, or more? How long is it since you received it that you missed it?

*Phaulst.* I kept the Letter in my Pocket some time.

*Mr. Kestley.* How long?—*Phaulst.* I believe I had it these Weeks.

*Mr. Kestley.* So that 'tis ten Weeks since you received this Letter, ten Months since you lost it: you kept it in your Pocket three Weeks: You can read Writing?—*Phaulst.* No, I cannot.

*Mr. Kestley.* What, not read Writing?—*Phaulst.* No, Sir.

*Mr. Kestley.* How can you be so particular as to the Writing?

*Phaulst.* I have heard it read often enough.

*Mr. Kestley.* Who read it to you?

*Phaulst.* John Child read it over to me two or three times.

*Mr. Kestley.* Why, this is more Remarkable, that at twice hearing it read, you can remember it, the very Words.

*Phaulst.* I can remember those Words to the best of my Knowledge.

*Mr. Haverford.* How can he tell, when he cannot read at all? There is nothing in it: If one was to ask him, whether you can recite the Articles of the Creed, I believe he could not do it, and yet is so exact in repeating the Words of this Letter.

*Prisoner.* What Countryman are you?

*Phaulst.* An Irishman: You know that long ago; you need not ask me that Question now.

*Mr. Serj. Popham.* My Lord, we shall now proceed, and produce the Plan of this Conspiracy, which was found among the Papers taken in Mrs. *Moloy's* Possession; and shall show how they came to be in Mrs. *Moloy's* Possession, and we shall press this Plan to be Mr. Loyer's own Hand-Writing.

[John Turner, one of the *Admiral's* Clerks, stands]

*Mr. At. Gen.* Look upon these Papers: I turn to the Papers.

*Mr. At. Gen.* Do you know any thing of these Papers, and where they were found?

*Turner.* My Lord, by Warrant from my Lord *Carleton*, Principal Secretary of State, dated the 29th of September last, I was directed to search



for me Mrs. *Majors* and Mrs. *Coit*, with Mr. *Steyn* same Day I executed that Warrant. I found out Mrs. *Coit's* House in *Lower Corner's* Yard, in *Little Street*, near *London's* *Jan-Fishy*, and in searching the House—

*Mr. Serj. Peag.* Who lodged there?

*Turner.* Our Mrs. *Majors* lodged there. I found her in the House; and in her Lodging there was a Trunk, and being demanded to open the Trunk—

*L. C. J.* Was your Warrant to search for both Mrs. *Majors* and Mrs. *Coit*?

*Turner.* For both, and in Mrs. *Majors's* Lodgings there was a Trunk which the other Messenger and I demanded to be opened; she opened the Trunk, and in the Trunk there were two Bundles of Papers sealed up; where there was a Trunk, which I ordered to be opened, and I took two Parcels out of it; one of 'em was sealed with three Seals, which I looked at; they did not appear to have been opened and sealed up again, I opened them, and marked them.

*Mr. Serj. Peag.* Look upon it: How do you know that to be the same?

*Turner.* I know it to be the same, because I wrote upon it, I fit my Mark upon it.

*Mr. At. Gen.* You say that these Papers were found in the Trunk, in two Bundles sealed up—*Turner.* Yes.

*Mr. At. Gen.* (Showing the *Warrant* under Paper.) Look upon that; see if that was in the same Bundle with that you left gave an Account of?

*Turner.* Yes, that was in the same Bundle.

[And he was examined as to several particular Papers, which he swore to have been found in the two Bundles taken out of Mrs. *Majors's* Trunk, and that he had for his Mark upon them.]

*Mr. Kat.* I beg leave to ask Mr. *Turner* a Question or two. Mr. *Turner*, I think you gave a positive Account of several Papers, what they are I know not of several Papers handed to you from Mr. *Peag*? You had a Warrant to search for Mrs. *Coit* and Mrs. *Majors*, and in a Trunk you found these Papers sealed up in a Bundle?

*L. C. J.* He said he had Directions from my Lord *Chancellor* to search for Mrs. *Coit* and Mrs. *Majors*. That he searched Mrs. *Coit's* House, and found Mrs. *Majors* there; he found a Trunk in the House, as Mrs. *Majors's* Lodgings, and he demanded the Trunk to be opened, and in the Trunk he found two Bundles of Papers, in these Bundles are these Papers which have been shown to the Witness. When he is asked how he knew them to be the same that were in the Bundles, he says, he knows them to be the same, because he fit his Mark upon them.

*Mr. Just. Forsyth* died. Were the Bundles sealed up?

*Turner.* Yes, my Lord, they were sealed up when we took them out of the Trunk.

*Mr. At. Gen.* In whose Lodgings were they found?

*Turner.* At Mrs. *Majors's* Lodgings, in her Bed-Chamber.

*Mr. Kat.* You say these Papers handed to you, you found in the Trunk in Mrs. *Majors's* Lodgings. Where have they been ever since?

*How come you to be so positive that these Individual Papers are the same Papers that you found in Mrs. *Majors's* Room?*

*Turner.* I put my Name upon them.

*Mr. Kat.* Is your Name put upon these?

*Turner.* Yes, upon each of them at that time.

*Mr. Kat.* How long were they in your Custody?

*Turner.* About an Hour.

*Mr. Kat.* Who did you deliver them to, when you parted with them?

*Turner.* I think, to Mr. *Steyn*.

*Mr. Kat.* I ask you, when you put your Name on each of them, was it before you first parted with them?

*Turner.* After the Trunk was open, and the Bundles were opened; in the Bundles finding Papers of Consequence, I was directed to go and fetch Mr. *Steyn* as being a Magistrate, to give that Person his Oath. While I was gone, I delivered the Papers into my Brother Messenger's Hands, and he signed them.

*Mr. Serj. Peag.* So you only leave for your Brother Messenger. How long after your first seizing the Papers was it before you put your Name upon them?

*Turner.* I believe three Quarters of an Hour.

*Mr. Kat.* Who had you left them with?

*Turner.* I left them with this Man, my Brother Messenger.

*Mr. Kat.* You left them with your Brother Messenger before you set your Mark upon them, how comes it that you are sure they are the same? How can you swear they are the same, when you went away and left them in your Brother Messenger's Hands, and did not fit your Name upon them, till you returned?

*Mr. Serj. Peag.* You say these Papers were fitted in Mrs. *Majors's* Lodgings, and that she was by, and unlocked the Trunk, and you took out the two Bundles?—*Turner.* Yes.

*Mr. At. Gen.* You say you delivered the same Papers to this Person here?

*Turner.* Yes, Sir.

*Prisoner.* Mr. *Turner*, in Mrs. *Majors's* Lodgings you say you found two Bundles of Papers sealed up?—*Turner.* Yes.

*Prisoner.* When Mrs. *Majors* had them locked up, were they then sealed up?—*Turner.* They were then sealed up.

*Prisoner.* Did not the seals appear to have been broken open?—*Turner.* No.

*Prisoner.* You saw two Bundles?—*Turner.* Yes.

*Prisoner.* You saw this Paper, and that, and all the Papers taken out of the Bundles. What Bundle was this Paper in? (Showing the *Plan or Scheme*.)

*Turner.* This was in the same Bundle.

*Prisoner.* Was there a small Bundle, and a great Bundle?

*Turner.* Yes, there were two Bundles.

*Prisoner.* And this was out of one of the Bundles?

*Turner.* Out of the small Bundle.

*Prisoner.* Did you for them taken out of the Bundle?

*Turner.* I can't say that.

*Mr. Haverford.* If I observe that Paper or Bundle right, it is one of those confessions of several Sheets of Paper; I desire he may hold it in his Hand, till we have done examining him.

*Mr. Kat.* Mr. *Turner*, that consists of more Sheets than one; did you sign your Name to each Leaf, or only to the first and the last Leaf of the Book?

*Turner.* I sign'd my Name to each Sheet.

[*Edward Sparrow* sworn.]

*Mr. At. Gen.* Mr. *Sparrow*, Did you go with Mr. *Turner* to seize any Papers at Mrs. *Coit's* House?

*Sparrow.* Yes, I did.

*Mr. At. Gen.* Give an Account of what you know of seizing any Papers there.

*Sparrow.* My Lord, by a Warrant directed to us from my Lord *Chancellor*, Mr. *Turner* and I were to seize Mrs. *Coit* and Mrs. *Majors*; and finding Mrs. *Coit's* House, I found Mrs. *Majors* there. At Mrs. *Coit's* found no Papers in the first Room; I proceeded into a second Room, where there was a Trunk, which I ordered to be opened, and I took two Parcels out of it; one of 'em was sealed with three Seals, which I looked at; they did not appear to have been opened and sealed up again, I opened them, and marked them.

*Mr. At. Gen.* Who was by?—*Sparrow.* Mrs. *Majors* was.

*Mr. At. Gen.* Was she there when you opened them?

*Sparrow.* She was by when they were opened.

*Mr. At. Gen.* Look upon them, are they the same Papers?

*Sparrow.* I have look'd upon them, and know them to be the same.

*Mr. At. Gen.* Are these the Papers that were taken out of the Trunk?

*Sparrow.* The very Papers.

*Mr. At. Gen.* In whose Room were they taken?

*Sparrow.* In Mrs. *Majors's* Room.

*Mr. Serj. Chyff.* Were they ever out of your Custody, till you mark'd them?—*Sparrow.* No, Sir.

*Mr. Serj. Chyff.* During the Time that *Turner*, your Brother Messenger, was gone for Mr. *Steyn*, who had the Custody of the Papers?

*Sparrow.* I had the Custody of them.

*Mr. Serj. Chyff.* Were any of them taken away, or were there any Alterations, or Addition to them, during that Time?

*Sparrow.* No, Sir.

*Mr. Serj. Chyff.* Do you remember that Mr. *Turner* set his Name upon them?

*Sparrow.* Yes, he did.

*L. C. J.* How long after your Brother Messenger returned back to you, was it before you set your Name upon them?

*Sparrow.* Immediately, my Lord.

*Mr. Kat.* How long did you stay in the Place after the Return of *Turner*?

*Sparrow.* I believe I might stay there an hour, or an Hour and a half.

*Mr. Kat.* Where did you first part with the Papers out of your Custody?

*Sparrow.* I gave them to Mr. *Steyn*.

*Mr. Kat.* How long after you left seized these two Bundles was before Mr. *Steyn* came to you?

*Sparrow.* I believe about half an Hour, or three Quarters of an Hour.

*Mr. Kat.* What did you deliver them to Mr. *Steyn* then?

*Sparrow.* After Mr. *Turner* and I had sign'd them, I delivered them to Mr. *Steyn*.

*Mr. Kat.* Was it not before you sign'd them?

*Sparrow.* No, upon my Oath.

[*Mrs. Elizabeth Majors* sworn.]

*Mr. At. Gen.* Mrs. *Majors*, Give an Account of what you know of these Papers?

*Mrs. Majors.* Mr. *Layer* left two Parcels of Papers with me: He told me they were of the Value of 500*l.* He afterwards took them away from me; and afterwards brought them to me again.

*Mr. Serj. Chyff.* You say, he delivered two Bundles first?

*Mrs. Majors.* No; he delivered only one, and that was the larger Bundle: He told me it was of the Value of 500*l.* and desired me to take care of it, and lock it up.

*Mr. Serj. Chyff.* When was the latter Bundle delivered to you?

*Mrs. Majors.* Some time after, and after that, he took them away from me; and in four or five Days time he brought them to me again: He took them away, and brought them to me again, and told me they were a few Love-Letters; and begg'd of me not to let Mrs. *Coit* know it, he would make a Disparagement, and tell his Wife.

*Mr. Serj. Chyff.* When had you the latter Bundle?

*Mrs. Majors.* I had that same time after.

*Mr. Serj. Chyff.* What Directions had you with the little Bundle?

*Mrs. Majors.* He desired me to take the same Care of that, as of the other.

*Mr. Serj. Chyff.* Was that sealed up?

*Mrs. Majors.* They were both sealed.

*Mr. Serj. Chyff.* Where did you put them?

*Mrs. Majors.* I put them into my Trunk.

*Mr. Serj. Chyff.* After this, you know where the Messengers came?

*Mrs. Majors.* Before that, he came one Day in the Afternoon to my House, and ask'd how I was? It was the Beginning of *September*; and I was not at home. He left a Message for me, that I should bring those Writings home. I carried them home.

*Mr. Serj. Chyff.* Home? What do you mean by Home?

*Mrs. Majors.* Mr. *Layer's* own House: He left Word, that he would be at home by eight o'Clock that Night. I was there about eight o'Clock; I ask'd the Maid whom he was? She said, he was in the Back-Parlour. I asked her if any body was with him? She said, there were two Gentlemen. Said I, tell your Master that I am here.

*L. C. J.* You say the great Bundle was taken from you again, and afterwards he brought the lesser Bundle; and after this you received Mr. *Layer's* Message, or Intimation, that you should bring home that Bundle.

*Mrs. Majors.* My Lord, I had two Bundles. He left Word, that I should bring his Papers Home; for he said at Home till eight o'Clock that Night. I went to his House? And when I knock'd at the Door, the Maid came to the Door. I asked her, if her Master was within? She told me, yes; he was in the Back-Parlour; and that there was a Gentleman or two with him. I didn't hear to go and tell her Master that I was there. And he came out to me; and I gave him the Writings; and he deliver'd me to come again the next Morning; which was on a *Saturday* about eleven o'Clock, for he was going out of Town: And that I would come and take those Writings again. Which accordingly I did.



was in the Morning, at the Time that the Bell was ringing at *Liberty's* Church, when I went to him, and he delivered me the Papers again.  
*Mr. Sir Geo. Can you recollect the Day that he left Word for you to come to him?*—*Mrs. Mayne.* It was the Beginning of *Barbadoes*-*time*.  
*Mr. Sir Geo.* What Day of the Week was it?  
*Mrs. Mayne.* It was on a Friday Night that I went and carried them to his House.

*Mr. Sir Geo.* And when was it that he desired you would come and call upon him?  
*Mrs. Mayne.* It was the next Morning at eleven o'Clock, or near the Morning, that I went to his House; and he got me the Writings again, and charged me to take Care of them.

*Mr. Sir Geo.* What was you to do with them?  
*Mrs. Mayne.* To take Care of them.

*Mr. Sir Geo.* Did you meddle with them, or open them?  
*Mrs. Mayne.* No, Sir, I put them in my Trunk; I lay there all the Time.

*Mr. Sir Geo.* Were they there when the Officers came?  
*Mrs. Mayne.* Yes, Sir.

*Mr. Sir Geo.* Was you there when the Bundles were opened?  
*Mrs. Mayne.* I was there.

*Mr. Sir Geo.* Did you mark the Papers yourself?  
*Mrs. Mayne.* I did.

*Mr. Sir Geo.* Look upon the Papers, and see if you find your Mark on those Papers?—*Mrs. Mayne.* Yes, this is my Mark.

*Mr. Sir Geo.* *Mrs. Mayne.* Was you present at the opening of them?  
*Mrs. Mayne.* I was—They were sealed up when I opened them.

*Mr. Sir Geo.* Did you put your Name on them?  
*Mrs. Mayne.* I did put my Name on them.

*Mr. Sir Geo.* Were they out of your Custody before you put your Name on them?—*Mrs. Mayne.* No, they were not.

*Mr. Sir Geo.* Did Mr. Turner put his Name to them?  
*Mrs. Mayne.* He put his Name to them before ever they were out of my Custody.

*Mr. Sir Geo.* You have marked all these Papers. You are sure these are the Papers you took out of the Trunk is *Mrs. Mayne's* Locking?  
*Mrs. Mayne.* I am sure they are.

*Mr. Sir Geo.* Show them to *Mrs. Mayne.* *Mrs. Mayne.* Were these Papers in the Bundles that were delivered to you by *Mr. Leger*?

*Mrs. Mayne.* Yes, Sir, they were.

*Mr. Sir Geo.* You have marked those Papers, have you not?  
*Mrs. Mayne.* Yes, I have.

*Mr. Sir Geo.* You say, you gave the Bundles back to *Mr. Leger* on a Friday, about the Beginning of *Barbadoes*-*time*: Do you remember when it was upon *Barbadoes*-*day* or not?

*Mrs. Mayne.* Indeed I don't know.

*Mr. Sir Geo.* What did *Mr. Leger* say when you brought them to him again?  
*Mrs. Mayne.* He only thanked me; and desired me to come the next Day and take them from him again: Which I did.

*Mr. Sir Geo.* Did he mention then that he was going out of Town?  
*Mrs. Mayne.* Yes: And it was about eleven o'Clock on a Saturday Morning that I went to him, and he delivered the Papers to me again.

*Mr. Sir Geo.* Can you write?—*Mrs. Mayne.* No.

*Mr. Sir Geo.* Have you made the same Mark on all these Papers?  
*Mrs. Mayne.* I was so frightened at that Time, that I hardly knew what Mark I made.

*Mr. Sir Geo.* If you was frightened at that Time, and did not know what Mark you made, how can you be sure you know your Mark again?  
*Mrs. Mayne.* Yes, I can tell it very well.

*Mr. Sir Geo.* When you say you was so frightened you did not know what Mark you made?—*Mrs. Mayne.* Yes, I do so.

*Mr. Sir Geo.* Upon the Oath you have taken, both any Body else these Papers before they were taken by the Messengers, whether *Mr. John Moore*, or his Man *Thomas* has seen them?—*Mrs. Mayne.* No.

*Mr. Sir Geo.* Nor his Man *Thomas*?  
*Mrs. Mayne.* No, nor his Man *Thomas*.

*Mr. Sir Geo.* I ask you, can you write, or can you read Writing?  
*Mrs. Mayne.* Indeed I can't.

*Mr. Sir Geo.* You only can make your Mark?—*Mrs. Mayne.* No.

*Mr. Sir Geo.* Do you only make but one Mark, or use several Marks?  
*Mrs. Mayne.* I make but one Mark.

*Mr. Sir Geo.* Pray, make the Mark you generally use. With Submission, my Lord, I desire the may have a Pen and Ink, so that he can make the same Mark again.

*Mr. Sir Geo.* Surely we are regular in desiring that.  
*L. C. J.* What you desire is proper. She says she knows them to be the same Papers, because she has felt her Mark upon them; they doubt whether they may mistake in her Mark, and desire the may make her Mark again.

*Mr. Sir Geo.* My Lord, we desire the may make her Mark again.  
*Mr. Sir Geo.* We desire the may have a convenient Place to do it in, and that the may sit down while the writes.

*Mrs. Mayne.* No, I can do it without. (A Pen and Ink and Paper is brought her, and she sits for Mark on E and an M.)

*Mr. Sir Geo.* Here are the Letters E and M set to the Papers produced; and though in the Constitution she should not make her Letters exactly like these, yet I apprehend that would weigh very little.

*Mr. Sir Geo.* My Lord, I can't tell what they mean; this doth not appear.

*Mr. Sir Geo.* My Lord, I desire to go on with our Questions. I ask you—

*L. C. J.* (Having compared the Letters made by *Mrs. Mayne* in Court, with those on the Papers) the Character which the new writes is like what he writes on the Papers; and to confirm her Evidence.

*Mr. Sir Geo.* Asks the Delivery of those two Bundles to you by *Mr. Leger*, I ask you whether *Mr. John Moore's* Man *Thomas* ever saw those Bundles opened?

*Mrs. Mayne.* No, he never was up in my Room; there was no such Fellowship between them.

*Mr. Sir Geo.* Did *Mr. Mayne* ever see them?—*Mrs. Mayne.* No.

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*Mr. Sir Geo.* Did ever you produce them to one *Blash*?

*Mrs. Mayne.* No.

*Prisoner.* No! Nor did *Mr. John Moore's* Man *Thomas* nor see them?

*Mrs. Mayne.* No, never upon my Oath.

*Mr. Sir Geo.* Did ever you produce them sealed up? Did you ever see *Thomas* or *Blash*, or *Mr. John Moore* himself for either of those Bundles as they were sealed up?

*Mrs. Mayne.* No, they were in my Trunk; I always kept them in my Trunk; perhaps as I opened my Trunk, they might for them lie in my Trunk.

*Mr. Sir Geo.* Do you know any *Mrs. Blash*?

*Mrs. Mayne.* No, I don't know the Name. I don't know any *Mrs. Blash*.

*Prisoner.* Did you ever know one *Mrs. Blash*?

*Mrs. Mayne.* I know none of that Name.

*Prisoner.* Did you ever go by that Name?—*Mrs. Mayne.* No.

*Prisoner.* Did you ever go by the Name of *Carle*?—*Mrs. Mayne.* No.

*Mrs. Mayne.* No, I never did go by the Name of *Carle*.

*L. C. J.* *Mr. Sir Geo.* I don't know what the Meaning of this Examination is, when it appears beyond Comprehension, that the Woman was an Acquaintance of your Client's.

*Mr. Sir Geo.* My Lord, if we proceed to be an ill Woman, I hope it will take all her Cards, so that her Evidence will not weigh with your Lordship on any Jury.

*L. C. J.* At the Time when these Bundles were seized, had they *Mr. Leger's* Seal upon them?

*Mrs. Mayne.* Yes, the Seal of *Mr. Leger* was upon them.

*L. C. J.* What say the Messengers? At the Time that you seized these two Bundles in Power, was there any Seal upon them?

*Messengers.* There were three seals upon one, and some Seals upon the other, and it was something of a Head.

*L. C. J.* What is *Mr. Leger's* Seal?

*Mr. Sir Geo.* Something of a Head, but I can't tell what Head.

*Mr. Sir Geo.* Do you know *Mr. Leger's* Seal?

*Mrs. Mayne.* It is something of a Head.

*Mr. Sir Geo.* Was it the Representation of a Man's Head, or the Head of a Bull?

*Mrs. Mayne.* It is a Head with something of a Raft about it.

*L. C. J.* *Mrs. Mayne.* Is it upon the Head? Is that Head the Seal of *Mr. Leger*?—*Mrs. Mayne.* Yes, Upon my Oath it is.

*L. C. J.* What says the Messenger? Was that Seal of a Head upon them, when you seized them?

*Messengers.* Yes, it was.

*Mr. Sir Geo.* Before that Time that the two Messengers came, *Mr. Turner* and *Mr. Spence*, and seized the Papers, and afterwards one of them went for *Mr. Mayne*, I ask you, whether you had these same Bundles to any Body before that Time?

*Mrs. Mayne.* No, I had turned them to Nobody.

*Mr. Sir Geo.* She hath said for two or three Times before.

*L. C. J.* Indeed, *Mr. Sir Geo.* we must direct you not to spend the Time of the Court so. You have asked her that Question two or three Times over.

*Mr. Sir Geo.* My Lord, I would very far have the Truth come out. *Mr. Sir Geo.* I will ask you a Question or two. What Trade or Business do you follow? What is your Trade or Occupation?

*Mrs. Mayne.* What is that to you? I have no Trade.

*Mr. Sir Geo.* I should like to ask you another Question before; have you not a Promise of Reward for the Service you do here, in giving this Evidence?—*Mrs. Mayne.* No, I have not.

*Prisoner.* Now you have second time?

*Mrs. Mayne.* No, You are an ill Jew Man.

*L. C. J.* Are you promised any Reward? Why don't you sit her whether she is to receive it? Is that a proper Question to ask a Witness?

*Mr. Sir Geo.* I submit it to your Lordship, whether it is not proper to ask her this Question?—*Mrs. Mayne.* The oath she took upon her Person, and sworn, that she would have a Reward for coming, ladies!

*Prisoner.* The Question is, Whether the oath never opened and confessed in any Book, that these Papers were opened before a Friend of hers, before the Messengers did it?

*Mrs. Mayne.* No, my Lord, I never did. I never opened them before any Body.

*Mr. Sir Geo.* They have asked you what Names you went by; do you know what Names the Prisoners at the Bar have gone by?

*Mrs. Mayne.* He had come from the Judges, that it may Letter came directed in the Name of *Keats*, that I should take it up; accordingly in two or three Days Time, they came a Letter, directed to *Mr. Keats*, and I took it up, and when he came I gave it to him, and he opened it, and I read it.

*Prisoner.* Where is your House?

*Mrs. Mayne.* Where? Where you left the Writings.

*Prisoner.* How can you tell how that Letter was directed which you took up, since you say you cannot read?

*Mrs. Mayne.* It was directed to *Mr. Keats*.

*Prisoner.* Did you read the superscription?

*Mrs. Mayne.* No, *Mr. Sir Geo.* did.

*L. C. J.* Now by you were desired by *Mr. Leger*, when any Letter came directed to *Mr. Keats*, to take it up; and that a Letter came directed to *Mr. Keats*, and you took it up; the Question is asked you, since you cannot read. How could you tell it was directed to *Mr. Keats*?

*Mrs. Mayne.* My Lordship told me it was for *Mr. Keats*, and she knew he went by the Name of *Keats* sometimes.

*Prisoner.* She told the truth.

*Mrs. Mayne.* No, I had I gave it to you, and you opened it, and you read it.

*L. C. J.* The Occasion of this Question is, that the *Messengers* was appeared of by you. She says, that you ordered it, that if any Letter came directed to *Mr. Keats*, she should take it up; a Letter did come directed to it, she took it up, and then delivered it to you; and you received it from her, and opened and read it; but how, by this, could you know this Letter was directed to *Mr. Keats*, when you can neither write nor read?



read? She having received such an Order, when then was a Letter come, it was natural enough, that she could not read, should ask her Ladyship the Directions of the Letter, and it was directed for *Francesca*; it was natural enough for her to take it up, and give it to us.

Who brought the Letter?—*Mrs. Major*. A Porter.  
*L. C. J.* Did he say from whence he came?  
*Mrs. Major*. He told me he came from the *Dutch-Side*, and asked me if *Mr. Francesca* lodg'd there.

*Mr. Hugg*. This Trunk that the Papers were in, did it use to be kept open, or was it lock'd up?

*Mrs. Major*. It was always lock'd up.

(*Mr. Dwyer* sworn.)  
*Mr. At. Gen.* *Mr. Dwyer*, do you know *Mr. Laver*? and how long have you known him?

*Dwyer*. I have known him about seventeen or eighteen Years; he was my Clerk; 'tis therabouts, I believe.

*Mr. At. Gen.* Do you know his Writing?

*Mr. Dwyer*. I believe I do.

*Mr. At. Gen.* Look upon that Paper. (*He shew'd the Scheme*.)

*Mr. At. Gen.* Do you take that to be his Hand?

*Dwyer*. If you ask me as to my Belief, I believe it is.

*Mr. At. Gen.* Do you often see him write?—*Dwyer*. Yes, Sir.

*Mr. At. Gen.* Have you seen him write since he left your Service?

*Dwyer*. I have had several Letters from him since he was my Clerk.

*Mr. At. Gen.* Look upon that Paper; can you swear that you believe that is his Hand-Writing?

*Dwyer*. I have seen the Paper before, and I do believe it to be his Hand-Writing.

*Prisoner*. Have you seen me write any thing but my Name these fourteen Years?—*Dwyer*. I can't particularly recollect whether I have or no.

*Prisoner*. How long is it since I was your Clerk?

*Dwyer*. About fourteen or fifteen Years.

*Prisoner*. Have you seen me write since I left?

*Dwyer*. I can't say I have, or I have not.

*L. C. J.* How long is it since you received any Letters from him?

*Dwyer*. About six Years ago.

*L. C. J.* How do you know these Letters came from him?

*Dwyer*. Because he was my Client, and went to me about Business; and I answered those Letters, and did the Business that he desired me to do by those Letters.

*L. C. J.* Did he pay you for that Business done?

*Prisoner*. Yes, very liberally.

*Prisoner*. You say you don't remember you have seen me write since I came from you; as to that Paper which you say you believe to be my Hand, have you compar'd it with these Letters?—*Dwyer*. I have.

*Prisoner*. Is that what you found your Belief upon?

*Dwyer*. That is what I chiefly found my Belief upon.

*Prisoner*. Consider, *Mr. Dwyer*, my Life is at Stake, and you say you have not seen me write these fourteen Years?

*Dwyer*. I don't know that I have.

*Prisoner*. Have you any of my Letters in Court?

*Dwyer*. I have not your Letters in Court.

*Prisoner*. You say, you found your Belief only by Comparison of those Letters. Now I wish you had brought those Letters here.

*Mr. At. Gen.* He does not say so.

*Dwyer*. If you had desir'd it, I could have brought 'em.

*Prisoner*. I desir'd it? I little thought to have seen you here on such an Occasion.

*Mr. At. Gen.* *Mr. Dwyer*, I ask you, if you had no Dealings with him since he was out of his Cell?

*Dwyer*. Yes, I was his Agent.

*L. C. J.* What Name is subscribed to those Letters?

*Dwyer*. *Christopher Laver*'s.

*L. C. J.* You did the Business mentioned in those Letters; and he honestly paid you for it?—*Dwyer*. Yes, my Lord.

*L. C. J.* I suppose, in your time, that you will find that other People write Letters in your Name?

*Mr. Knowlly*. You say, you believe that Paper to be *Mr. Laver*'s Hand-writing. And if I did not misunderstand you, I took it down in Writing, you founded your Belief on the comparison that Writing with the Letters which you receiv'd?

*Dwyer*. I did, I chiefly founded my Belief upon such Comparison of Hands.

*Mr. Knowlly*. That you chiefly did so; and you have not those Letters here in Court, on which you chiefly founded this Belief.

*Mr. At. Gen.* *Mr. Dwyer*, I think you say you have seen him write several Times?

*Dwyer*. I don't remember that I have seen him write these fourteen Years.

*Mr. At. Gen.* During the Time he was your Clerk, you have seen him write?

*Dwyer*. Yes; he was but two Years with me: He had been Clerk with *Mr.*

*Mr. At. Gen.* Then he had been us'd to Business before he came to you; and had serv'd his Lord.

*Mr. Hugg*. How old was he when he was your Clerk?

*Dwyer*. I don't know.

*Mr. Hugg*. You form your Belief upon the Remembrance you have of what was his Hand-writing fourteen or fifteen Years ago?

*L. C. J.* You say, you received Letters subscribed by his Name five Years ago?—*Dwyer*. Yes, my Lord.

*L. C. J.* Was the Character of those Letters that you receiv'd five Years ago, agreeable to the Characters that he writ when he was your Clerk?

*Dwyer*. Yes, my Lord.

*L. C. J.* Then I ask you upon the whole, whether you believe it to be his Hand-writing, or not?—*Dwyer*. Yes, I do believe it to be his Hand.

*Prisoner*. Since my unhappy Circumstances, have you had no Promise of being restor'd to your Place again, or the Possession of some other Office or Place?

*Dwyer*. No; I never, to my Knowledge, have seen one Man that had the Power to put me in my Place again; nor ever conversed with any one Great Man upon that or any such Affairs.

*Mr. Serj. Pigg*. We think we are entitl'd to read it: However, there may be no Dispute, we desire to call *Mr. Doleys* and *Mr. Arnes* in whole Presence the Prisoner at the Bar, confirm'd it to be his Writing.

(*Mr. Doleys* was sworn.)

*Mr. Serj. Pen. Sir*, is that Paper then to the Prisoner at the Bar?

*Mr. Doleys*. I was not near enough when he was before me, to see the Council, or to see what was on the Table; neither did I look upon the Table, to see whether that Paper was on it or not. But upon a Question that was asked him relating to some Arms, if he knew where any lodg'd as such a Place, he said no. Upon which, one of the Judges of the Council held up a Paper, a might be this, for aught I know.

Here is your own Paper, your own Hand-writing; which Arms that are there lodg'd; says he, I should have writ Arms that he there lodg'd.

*L. C. J.* Whether it is that the Paper or no; and did he own that it was then shewn to be his?

*Mr. Doleys*. The Question was not asked, Is this your Paper and Hand-Writing? But it was shewn to him as such; and he said, I should have writ Arms that should be there lodg'd.

(*Mr. Stowson* sworn.)

*Mr. At. Gen.* *Mr. Stowson*, do you remember whether this Paper was shewn to the Prisoner at the Bar, or any Questions asked him about it when he was before the Lords of the Council?

*Mr. Stowson*. Upon the Question that was asked him about the Arms, this Paper was shewn him; I think this is the Paper; I was never near the Table than *Mr. Doleys*, and did observe this Paper to lie upon the Table before the Lords, and do take that to be the Individual Paper that was shewn him then.

*Mr. At. Gen.* What was said to him at that time?

*Mr. Stowson*. The Question was asked him, What he knew of any Arms that were lodg'd in *Windsor*? He said, he knew of none. I then said, the Paper was shewn to him, and a Question was asked him; here the Arms are said to be lodg'd in this Scheme of your own Hand-writing; he came you to write it, if there be no Arms lodg'd? *Mr. Laver* said, that was a Mistake: It was not intended Arms that are there lodg'd, but Arms that should be there lodg'd. He said, I should have writ Arms that should be lodg'd, instead of Arms that are lodg'd.

*Mr. Serj. Pigg*. The Question was concerning a Paper of his own Hand-Writing.

*Mr. Stowson*. Yes; it was concluded, that the Paper was of his own Hand-Writing, and he did not deny it.

*Mr. At. Gen.* Did he say it was not his own Hand-Writing?

*Mr. Stowson*. No, he did not.

*Mr. Knowlly*. Was the Question ask'd, Whether that Paper was his Hand-Writing, or no?—*Mr. Stowson*. No, I believe not.

*Mr. Knowlly*. Then if there was no Question ask'd, whether did he own it to be his Hand-Writing, or no?

*Mr. Stowson*. He did not expressly own it to be his Hand-Writing.

*Mr. At. Gen.* He was not ask'd that Question, whether it was his Hand-Writing, or no?—*Mr. Stowson*. No, Sir.

*Mr. Serj. Pigg*. He did not deny it to be his own Hand-Writing?

*Mr. Stowson*. No, Sir.

*Mr. Hugg*. Whether the Lords in their Question did state it so, asking it for his own Hand-Writing?

*Mr. Stowson*. It was taken for granted that it was so, and he made no Offer to deny it.

*Prisoner*. Pray, Sir, let me ask you one Question about the Arms? What I was ask'd, if there were any Arms lodg'd, did I not answer in the Negative, and said, No?—*Stowson*. Yes.

*Prisoner*. In relation to the Arms, you say, that I said Arms that should have been lodg'd?

*Stowson*. That was upon the Lords asking you, to explain that Part of the Scheme relating to Arms; and when you said you knew of no Arms that were lodg'd, then said they, How come you to mention in the Scheme of your own Hand-Writing, Arms that are lodg'd? To which you answer'd, I should have writ Arms that should be lodg'd.

*Prisoner*. When I was ask'd, why I did say Arms that were lodg'd? Why, said I, my Lords, I know of no Arms. If that was my Paper, and I had writ it, I should have writ Arms that should be lodg'd.

*Mr. At. Gen.* My Lord, we pray that the Papers may be read.

*Mr. Hugg*. My Lord, we hope that these Papers, [not for my Paper, know not what they are, for there is no Hand of them in my Book] shall not be read, for this Reason, the Evidence which hath been given for the King, hath not brought them home to the Prisoner. Though no legal Proof that the Papers are of his Hand-Writing; and consequently he cannot be affected by any thing that is in them. As to what is said of the Likeness of Hands, that we humbly hope is no Evidence at all. The best Witness, *Mr. Doleys*, he hath said it is like his Hand, but he says that Opinion of his, on the Knowledge he had of the Prisoner's Hand fourteen Years ago; and by some Letters he received from him about fourteen Years since; *Mr. Laver*'s Hands may differ and vary even in five, much more in fourteen Years.

What follows is the Evidence that hath been given by the Gentleman belonging to the Secretaries Office.

I personally know them to be Gentlemen of good Sense, Integrity and Honour, and for my Part I believe every Word they say, which is more than I can say of the other Witnesses hitherto produced. But what they say, does not, with Submission, affect the Prisoner: They were produced when the Prisoner was examin'd before the Lords of the Council, and of them hand the Prisoner acknowledge that the Papers were writ by him, or that he did own them as his; neither was he asked any Question to that Purpose; neither did the nature of the Examination my Lords of the Council were then upon, lead them to such a Question: The Lords were not asking *Mr. Laver* Questions to fix an Evidence upon himself, but the Lords having seen Papers before them, and, according to the nature of their high Stations, being intent upon discovering what might be dangerous to his Majesty and the Public, they ask'd *Mr. Laver*, where the Arms were deposited in *Windsor*? He answer'd, That he knew of no Arms.







The Adt recites, *That* *Col. Sydney, by Means of an illegal Return of the Jury, by denying him his lawful Challenge to the Jurymen, for want of Privity, and without sufficient legal Evidence of any Treason committed by him, there is no produced a Paper found in his Closet, supposed to be his Hand-Writing, which was not proved by any one Witness to be written by him; but the Jury was directed to deliver it by comparing it with other Writings of his; And against that Paper he produced, there was not one Witness to prove any Matter against him, and by a partial and unjust Construction of the Statute of Treason was unjustly convicted. And then the Adt recites the Answer. Surely, if the Nature of the Evidence we have given, to prove this Paper to be the Prisoner's Hand is considered, it stands clear of any material Objection that can be raised from that Adt. This is not fairly proved by a comparison of Hands; here is a Witness, that often saw him write, forsworn to be his Hand-Writing: There was a Multitude of Papers, some offered to be proved by Similitude of Hands, and every one of them was read in my Lord *Proctor's* Case.*

Besides, here is that, which I beg Leave to insist upon, as a Confession by Mr. *Laver*, that this Paper was his Writing; if the Question proposed to the Prisoner by the Lords of the Council and his Answer are considered, it amounts to a plain Confession of it, therefore we must insist on it, that we have given a sufficient Evidence for the Reading of this Paper; and I hope we shall have your Lordship's Direction that it shall be read.

*Wherefore* *your Lordship of the King's Counsel offered to speak.*  
*L. C. J.* If there was any Occasion, you should be heard; but there is no Occasion.

It is proved by the Witnesses that these Papers were in Mr. *Laver's* Possession, that he delivered them to Mrs. *Adams*, that she locked them up in her Trunk, sealed at they were delivered to her by Mr. *Laver*, and after ward taken out of her Trunk by the Messengers, so that if they read it here, and no other Evidence had been given, the Papers ought to be read, as being his Papers, which he once had in his Possession, if nothing else had been the Case.

Can any Thing in the World be an Authority more express than that of my Lord *Proctor*, where all the Papers which were in his Custody, and taken out of his Custody, were read without any Offer of Proof that they were his Hand?

And then consider, this goes further; it is not only a Paper found in his Custody, but it is a Paper written with his own Hand! How do you prove that?

The Master of this Gentleman tells you he was his Clerk, lived with him two Years, afterwards he received a Letter from him about Business, which Business he did according to the Direction of the Letter, and was paid honourably by him for it, and that he believes it to be his Hand. If they had gone no farther, nobody could have doubted, but that according to the usual Course and Rule of Evidence it ought to be read. Then they make an Objection, and ask how long it is since he was his Clerk? Why about fourteen or fifteen Years ago! His Hand may be altered in that Time very much: therefore how can you swear it, when it is so long since, that it is his Hand! Why, says he, because I have received Letters from him five Years ago! I dealt for him as his Agent; this Gentleman, Mr. *Laver*, was my Client, he sent Letters to me, and the Characters of the Letters I have compared with this Paper, and from hence it is I believe that his Character is not changed. How do you know he wrote those Letters? I answered those Letters, and they were about Business which I did for him, and afterwards he paid me very honourably for it; and therefore I believe they were his Writings, and therefore I believe he hath not changed his Character; and upon the whole Matter, says he, I verily believe it to be his own Hand-Writing. Consider, this is confirmed by his own Confession; but if it had been an independent Evidence, it is an Evidence sufficient for to have had this Paper read; because if a Man says he verily believes it to be his Hand-writing, it is always allowed to be read. You did ask him, but upon what Grounds do you believe his Character is not changed? Why, says he, I do principally believe it more the Letters I received from him, which I should have doubted on the Hand, which he wrote fourteen Years ago, whether it was changed or not; and I believe it is not changed, because it is agreeable with the Character he was, when he was my Clerk; and upon the whole, I believe it to be his Hand-Writing.

Then they tell you of an Examination of this Gentleman before the Lords of the Council, when they asked him about Arms, he knew nothing of them; then they show him this Paper, and ask him, How come you in a Scheme, all of your own Hand-writing, to say, Arms that are provided? What was more natural than for him to say, here is a Paper that doth mention it, I deny it to be my Hand-Writing! But he was far from denying it, that as the plain Sense and Import of the Words spoken must be understood, he owns it to be his Hand.

It is a Mistake, says he, I should have writ which should have been provided.

How should he have writ that, if he had not writ the other?

So considering the whole Contents of the Business, and Course of Proceeding, it is, and I believe none can doubt it, as plainly proved to be his own Hand-Writing, as if he had said so to many Witnesses, it is my Hand-Writing. It may have been read as a Paper found in his Custody. The other Evidence, that is given to the Jury, will be a Matter proper for their Consideration; but if that Evidence had not been, they must have been read, they offer that as of greater Import, because it is of the Prisoner's own Hand-Writing.

You tell us of the Lady *Carter's* Case, which was an extraordinary Case, when she in her Answer in Chancery swore that it was not her Hand, she came to contradict her of Perjury, by proving it to be her Hand by a Letter they produced.

Gentlemen, there is no Presence to make this a Question. Do you think that it, Paper which we shall confess this Woman's Paper? No; when the *Adt* was read, it was not her Hand, there came to prove it by a Witness, that says he believes it to be her Hand, because they produce a Letter, which they say is her Hand. I Upon this the Court determines that this Evidence should not be allowed; that is, that it could be of no Consequence to satisfy any Matter, which the *Adt* declared upon Oath.

But as this Case is, sure there is not the least Doubt but if the Proof of his Hand had been out of the Case, it must be read as a Paper that was in his Custody, and taken out of the Custody of one, with whom he had deposited it, which is proved beyond all Contradiction.

And in the Case of my Lord *Proctor*, and in a thousand Cases, it has been so, and never was denied.

True, if they come and say, it is this, his Hand? and the Witnesses don't know whether it is his Hand or no, I have seen something of his Hand, and I don't know but it may be his Hand, it is not right; but the Witnesses must ground his Will (stronger) I have seen him write, and know his Writing, therefore I believe it to be his Hand. If they say, I believe it on that, that the fact Evidence know his Hand fourteen Years ago, that must be left to the Jury, whether they believe Mr. *Duyl's* Evidence, because, says he, I saw him write fourteen Years ago. The *Forfeiture* says that, if there was nothing else in the Case, might be left to the Jury, whether that Evidence was sufficient to satisfy them that it was his Hand. Upon the whole, never was any thing clearer than that this must be read as a Paper found in his Custody, that hath in the usual Manner and Method the Proof of being his Hand-writing.

*Proctor*. If I am out of Time I beg your Lordship's Pardon; I will not stir up your Lordship's Time, I only beg a Word or two; when they read any legal Evidence as to the Publishing the Indictment of the prisoner against malicious Libel and sedition, and that is not that, that is the Declaration.

*L. C. J.* Whatever you say or offer, although it happen to be out of Time, we will dispense with you, when out of Time; but what you say now is upon a Mistake, we are not upon the Paper you should apply to, that is, the Matter of your Declaration, but we are upon the Sentence, yet, not whether you published it, but whether you wrote it.

*Proctor*. I am charged by the Indictment as publishing a malicious, libelous and seditious Writing.

*L. C. J.* You are charged with that an Overt-Act of the Treason, of compassing and imagining the Death of the King; that you did publish a malicious, libelous, and seditious Paper, that is the matter of the Declaration. The Matter now is, not for Publishing, but whether there is a reasonable Proof given that it is your Hand-Writing.

Mr. *Just. Power*. This is only a Circumstance, not an Overt-Act sufficient to convict you.

Mr. *Ed. Geo.* My Lord, we offer this Paper as a strong Evidence corroborating and confirming every Thing which hath been sworn by the Witnesses, and we pray it may be read.

Mr. *Hargrave*. I was reading the Adt of Parliament when they—

Mr. *Ed. Geo.* My Lord, we must beg leave to insist upon it. C. is of Proceeding, that the Council should not go on to argue a Point, after the Opinion of the Court has been given.

*L. C. J.* Now you have heard the Opinion of the Court, you must not go on.

Mr. *Hargrave*. I was looking upon the Adt of Parliament—

*L. C. J.* You remember *Proctor's* Case, there was a Letter taken up at his Bedside, it was disputed whether that should be read; as Letter with some and read, I have from him write several Times, and I believe it to be his Hand, and it was read.

Mr. *Hargrave*. Ay, truly read.

(*Clk of the Crown reads the Scheme.*)

## THE SCHEME.

*As defect de la force, il faut suppler la loi.*

1. **L**ET the General, and only one Officer of Note in the Camp, agree upon a Day for Execution.

2. Let the Officer that Day pay himself on the *Treasurer's* Account.

3. And as there is eight *Serpents* (say), three of the best Regiment of Foot-Guards, three of the Second, and two of the Third, all ready at an Hour's warning to obey Orders, early that Morn, let the Officer for a single Prison, namely *George Wills*, who manages these *Serpents*, and give him Directions to bring them all to some convenient Place at four that Afternoon.

4. Then the Officer must give each *Serpent* Money sufficient for the Purview, and direct 'em that each *Serpent* order twenty-five Men (making together two hundred, which they are ready) to go singly out of the Camp, and meet together in Church-Yard, exactly half an Hour past eight in the Evening, when and where another Officer (that they know, must meet 'em, and take the Command) give 'em Money ready laid, and mix 'em with them in a Body to the *Yemen-Gate*, at not than Night exactly.

5. One Friend, the Officer within, must precisely at that Hour of night be on the Guard at the *Treasurer's* Gate, and facing this Body of Men 'till he order the Garrison to let 'em in, as a Reserve sent to the *Treasurer's* Gate.

6. As soon as ever they have received the Order from the *Treasurer's* Gate, that the Gate up, and every every one in the *Treasurer's* Gate, the Officer on Guard gives them Orders to retire, but not to that any Body.

7. The *Treasurer* bring that Body to leave only a small Guard there under that Officer who let 'em in, and then, with all rest, that you may march directly to the *Exchange*, where the great Doors must be well opened, and the General there in Person.

8. At the exact Hour of nine, that the *Treasurer* shall be there seized, the Prisoner of some great Men to be seized at their Houses, brought directly into the City, and delivered to the General.

9. That upon any Meeting at the *Exchange*, the ordered Proclamation to be spread about; the Gates of the City to be shut up, and Prisoners of Cannon brought down against 'em, but every Man that dares to resist the Gates, before any regular Force appear, as be admitted to come in, and after the General has appeared at *St. James's* Gate, and Issues of the City, with proper Officers to command there; let him march back



General Rendevous under the Cannon of the Tower, and under the Lord Mowbray's Guard to watch over the Mob, but first take Money from the Tower, in order to pay the Men.

That on the Morning of this same Day, our General to have an Interview with some of our principal Officers of the Camp, and order him to engage all Friends to stand at their respective Posts, and expedite (a) Orders to be sent to each of them at that very Night, on receipt of which Orders, they are to draw their Men out, and march directly to the City in the Camp, as a Place of General Rendevous; and that the Captain of the Artillery may not be absent, let this Principal Officer (a) send a Message to him, that Orders are come from the General (a) to double the Guard of the Artillery, on a Rumour that is spread of the Mob being up in the City.

I he Party being come to the Artillery with the said Principal Officer, the Head of 'em, let 'em immediately draw the Guns round 'em, and stand upon their Defence, without making any Declaration, until the said principal Officer, who commands in chief there, receive certain Intelligence from our General that the Tower is forced upon, and the City all in Arms, and then under a Pretence of securing the King's Person, send some of the Mob, let this Officer make a Detachment to take him into Custody, and send him into the City to the General's Tent.

To facilitate these Proceedings, let the General the first Day speak to the City's Officers in the Camp, who he knows to be our Friends, and upon the very first Alarm of the City's having revolted, let 'em march to the Tower under Leaders or Sergeants, on pretence to suppress the Mob; and when they are at the Gate, as a Token of their being Friends, let the Watch-Word be this Morning, and upon giving as the Word there, let the Gates and let 'em in, and as soon as they are entered, to march directly to the Tower-Hill and join themselves with the General there.

12. Let the General also the same Day order four of the Half-pay Captains to take upon them the following Commands, (a) viz.

1. Let the Captain go into Southwark, and exactly at the Hour of nine, to make a bonfire in the Fields there, and give force Money among the Mob; and when you have got a Number together, send an Account to the General, take the Arm that shall be lodged there, and distribute out amongst you to your Acquaintance in the first Place, and to those which they recommend, and then stir out the Declarations; and after the Receipt of a Token from the Captain next mentioned, who is to command in Palace-Yard, to fire your three in the Light-house, with the Watch-Word this Morning, and join the Captain in Palace-Yard.

2. Second Captain, exactly at the Hour of nine, to be in Prince-Garden, adjoining to White-Hall, with a few Gentlemen armed, and seize upon the great Guns there, and then spread the Declarations, and by three under the Cannon hit a greater Body than you first intended, or otherwise run up the Cannon, and march directly to the said Captain in St. James's Park with the Watch-Word this Morning, and when you find the Tower, as above, to the first Captain in Southwark, let the Messenger you find conduct him and his Men to you in St. James's Park.

3. Third Captain at the said Hour of nine, to go into St. James's Park, with the Key that is given you of the Private Road out of Abchurch-Lane-Street, and appoint only some few Gentlemen to meet you there, exactly at the Hour and ready, and to have the Watch Word you give 'em, which shall be this Morning. Let your first Rendevous be at the Little Gate under the Wall near the Gate leading to Hyde-Park, and there you must first Arms ready charged. Then march down to the Parade near the Horse-Guard, and seize upon the Cannon there, and Ammunition as before, and the better to secure St. James's Park for a Place of general Rendevous, you shall have an Officer out of the Camp exactly at the Hour of nine, come to your Assistance with some Men, and as you shall agree in the Matter of this Day, and as soon as you have seized the Cannon here, and Ammunition as before, you are to put yourselves in a Posture of Defence, and publish the Declarations, and send forthwith to the General at the Tower to let him know of your Situation, and also feed to the Captains in Palace-Yard, Southwark, and White-Hill, that they immediately come and join you.

4. Fourth Captain, exactly at the Hour of nine, the Evening of the same Day, to be in White-Fields, call the Watchword Mob there, and with the Arms that are there left, equip them as you can; publish the Declarations, and march to St. James's Park directly, and join with them there, upon your giving them the Watch-Word, and to admit you into the Park.

5. So here being two Bodies of Men thus gotten together the first Night, viz. One on Palace-Yard, and the other in St. James's Park, (besides our friends at the Artillery in Hyde-Park.) The next Morning, if no sooner, let our General order a Detachment to London-Jew-Fields, and take Cannon to be placed on the Terms of the Garden there, let the Enemy come in there between St. James's Park and the City.

6. A proper Captain must be appointed to lead the Watermen belonging to the Tower, and previous to the Day of Execution, he must agree with the Duke's Burgesses, that upon the least Notice to be given them, that they alarm all the Watermen, and bring them to a Rendevous the fourth Hour of nine that Night of Execution, and this Captain's Rendevous shall be at Greenwich, where he must seize the Magazine of Powder, and take out such Part of it as each Man will carry, then blow up the rest; march from thence to the Tower, and join his Men with the General there, to whom he must first send a Messenger with the Watch Word, and an Account of his Numbers.

7. Some Time before Execution, the General to send a Messenger to particular Men in the Country, that they rise in their respective Counties upon the News of what is done here—

8. An Officer, viz. to go to Rochester, and at the exact Hour of nine to seize upon Prince Priny's Men, and bring him away to Southwark to some particular Place appointed, where an Agent from the General must meet there with his further Orders.

(a) It may be a Note in Writing than 1. For, I'll be at you at nine To night, don't fail me.

(b) A verbal Message by a Private Person that shall be by, when the General and this Chief Officer conspire together: 23 Marcus

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Mr. Serj. Peng. We read this as an Evidence that cannot be mistaken, which is all of his own Hand-Writing.

Mr. Atty. Gen. May I add, we apprehend that this confirms what both the Witnesses have sworn.

Mr. Serj. Peng. We shall now produce some Receipts subscribed by the Name of James R. and pray that they may be read, these were likewise among those Papers, as hath been proved in the Manner you have heard already.

Clerk of the Crown reads one of them.

I acknowledge to have received, viz. which I promise to repay with an Interest for it at the Rate of

L. G. J. There are not read as if proved, the Hand is not proved, but as Papers found on him.

Mr. Atty. Gen. In my Lord Profeta's Case, his Lordship was taken in the Hold of a Ship lying upon the Ballast, and after three near him, and between his Lordship and the Ballast was found lying also upon the Ballast, a Packet of Papers which about French's up, and put into his Bosom, from whence they were presently taken: two Sides, which appeared to be my Lord Profeta's, when he was Secretary of State, were found lying next to the Papers. Upon this Proof these Papers were read as Evidence against my Lord Profeta, without any Proof made of their being his Hand-Writing, in order to the Reading of them.

Mr. Hug. My Lord Profeta was taken on board a Ship going to France, then in Way with England, these Papers were found in the Bosom of Mr. Abbot, who was going with him; my Lord endeavored, as far as he could, to throw them over-board: The Officer did not turn upon the Papers being writ by my Lord Profeta, or not, as my Lord Profeta's Case the Papers contained a Liency on the Countess of the Fleet and Gariboldi of England and France, in order to enable France to invade us; it signified nothing who wrote his Papers, the Crown was the having them, knowing the Contents of them, and endeavoring to carry them to France, in the Circumstances of my Lord Profeta widely differ from this.

Mr. Kenby. I beg leave to mention another Thing, these the Papers were found in the Custody of my Lord Profeta; here they were found in the Custody of a third Person, whose Evidence we shall consequently by a number of Witnesses, when it comes to our turn. I believe it will appear that some of the Papers were found on the Table in my Lord Profeta's Cafe, and others taken out of his Pocket.

Mr. Atty. Gen. No, they were first found lying on the Ballast.

Mr. Kenby. We were found on Abbot, and taken out of his Bosom, were first lying on the Ballast; but there were other Papers found at that Time.

Mr. Atty. Gen. They were the same Papers that were afterwards taken out of Abbot's Bosom, which were read as Evidence against my Lord Profeta upon the Circumstances I have mentioned.

Mr. Kenby. As I remember, some of them were found on the Table in the Cabin.

Mr. J. B. J. No, they were on the Ballast in the Hold of the Ship.

L. G. J. You say that they were found in my Lord Profeta's Possession, and not in the Possession of Abbot; you say my Lord Profeta had no Counsel, but you know it is the Duty of the Court not to suffer any thing to be read in Evidence that ought not. You say you shall controvert this Matter, and give an answer to it, and that it appears they were not in his Custody, thus were taken out of this Witness's Custody, and under his hand, and therefore the Difference it makes is nothing at all. Besides, the Proof in my Lord Profeta's Case is not so strong as the Proof of the Scheme against the Prisoner, because the Scheme is proved to be his own Hand-Writing, which was not in the Case of my Lord Profeta.

Mr. Kenby. My Lord, will not your Lordship think it necessary that they give further Evidence that they see his Papers before they read?

L. G. J. Read twice.

Cl. of the Cr. I acknowledge to have received, viz. here are ten of them, that are the same.

Mr. Serj. Peng. Mr. Stuyvesant, do you remember whether any Quillets were shif'd him with relation to those Receipts?

Mr. Stuyvesant. What I recollect is this: Upon the Lords asking Mr. J. B. J. the Meaning of these Receipts given by the Prisoner, and what Use he made of them, he said, that during the Time he was at Rouen, he had writ a Correspondence with Sir William Ellis, and some time afterwards he went to Sir William Ellis according to the Direction he gave him, and he told him, if he could send any Receipts signed by his Majesty, or the King, as he called him, he thought every might be read upon them for carrying out the Cause, these were the Words, as near as I can remember.

Mr. Atty. Gen. Mr. Delafaye, was you by?

Mr. Delafaye. It was for railing Money to carry on his Cause, you mean Sir William Ellis's Cause?—Mr. Stuyvesant. No, Sir.

Mr. Hug. He acknowledged to have received them from Sir William Ellis?—Mr. Stuyvesant. Yes.

Mr. Kenby. You said he could not had them from Sir William Ellis, having settled a Correspondence with him, that Money might be raised by thence to carry on his Cause, he told you he had written to do for Sir William Ellis?

Mr. Stuyvesant. No, I know nothing of Sir William Ellis's Business, but that he had appointed to correspond with him, that Money might be raised by thence to carry on his Cause, he told you he had written to do for Sir William Ellis?

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Mr. Knolly. I ask you, whether it was reduced into Writing?  
Mr. Stanger. Yes, it was; the Lords sent to me to assist Mr. Doleys, upon Mr. Layer's being examined: Mr. Doleys took the Heads of the Questions propounded, and I sat near the Table, looked over Mr. Doleys, attended to the Questions and Answers; so that we could let one another right when we came to consider them.

Mr. Knolly. This you wrote, was it read over to the Prisoner?

Mr. Stanger. No.

Mr. Knolly. Do you believe the Prisoner at the Bar saw you write?

Mr. Stanger. Yes, I believe he saw us write.

Mr. Knolly. Do you believe he thought any Person was taking his Confession? Writing—able, Stanger. I think it cannot be otherwise.

Mr. Knolly. I ask you, do you believe that Mr. Layer knew that you was taking his Confession at that Time?

Mr. Stanger. The Lords spoke thus: *Pray, Mr. Knolly, and then take down such a Thing, and such a Thing; and I believe Mr. Layer heard them say, Take down that, and take that.*

Mr. Knolly. Was it ever known for one to take down the Questions, and the other the Answers; and then to compare them together, in order to make a Confession?

Mr. Stanger. No, Mr. Doleys wrote down the Questions and Answers.

Mr. Knolly. How was the Prisoner of Mr. Layer, with respect to you; was your Back or Face towards him?

Mr. Stanger. It was on one Side.

Mr. Knolly. Was you in the Room when Mr. Layer came in first?

Mr. Stanger. I was, I called on Mr. Layer by the Lords Order.

Mr. Knolly. Was it ever read to him?—Mr. Stanger. No.

Mr. Knolly. Was it drawn up in French, for that you might call it an Examination?

Mr. Stanger. I will tell you what we understood by it: It was the Minutes of an Examination to be drawn out in French: But the Lords desired Mr. Layer not to be so wild and imprudent as they thought he would have been, did not ask him to sign it; and we only make Use of it to refresh our Memories.

Mr. Knolly. He calls it an Examination, and it appears by what Mr. Stanger tells, that he and Mr. Doleys took it; one takes one Part, and the other takes another Part.

Mr. Sir Geo. H. did not say any such Thing.

Mr. Knolly. The Confession was read over to him.

Mr. Sir Geo. H. Stanger, when the Lords desired Mr. Doleys and you to write this, or that particular Thing, was the Prisoner to hear that in your Apprehension he might bear their Lordships give such Directions?—Mr. Stanger. Yes, he was.

Mr. Knolly. Sun, they are not contending, that any Confession should affect a Man, unless it was read to him, and it ought to be signed by him; yet the Man is no way answerable for any Thing taken in Writing, without his Consent or Pivity, in a criminal Case: It is called Minutes, or an Examination, which they might enlarge as they please; therefore you hardly submit it to your Lordship, Whether it ought to be offered in Evidence at all as a Confession.

Mr. Knolly. What will be the Consequence, if this is allowed here? Is a Person to be convicted of Treason upon a Confession taken, without its being read to him, and without his signing it? A Confession to a Justice of Peace, in Cases of Felony, unless read to the Party, and signed by him, must not be given in Evidence.

L. C. J. Mr. Knolly, you seem to mistake what it is that is contended for by the King's Counsel: They are not going to offer any Thing to be read in Evidence; your Objection would prevent, if they were going to read a Confession in Evidence, which was either read to him, not signed by him; but if there is no Examination reduced into Writing, and signed by the Party, the Consequence of that is, that the Witness is at Liberty to give an Account of what was said; and he may look to his Oath as to refresh his Memory: If you will say, it is not so great an Evidence, of so great Weight, as an Examination taken, and signed by the Party, there is some Room left, some Foundation to suppose the Evidence may be mistaken.

He says, he was examined before the Lords of the Council; and he took Minutes of his Examination: And afterwards to refresh himself, he looks upon them, and says, he believes that is the substance of what he was convicted at that time. You say, there is no Precedent for it; for God's sake I need not say, it is every Day done at the Old Bailey: If a Person confesseth, and it be not in Writing, they do prove his Confession, find out.

Mr. Sir Geo. H. My Lord, Calow's Case, which was during the Time that Sir William Jones was Attorney-General, went further than this. There his Letters were laid in the Indulgence, as the very Over-All of the High Treason charged against him; and yet one of those Letters was proved by his Confession, upon an Examination before a Committee of the House of Lords; and that Confession was proved, find out, by Sir Philip Lynd.

Mr. Knolly. Whether that Case will be a Precedent? I never heard it so reckoned.

Mr. Knolly. And I hope it will never be one.

(Mr. Doleys sworn.)

Mr. Sir Geo. H. My Lord, Doleys, pray, give an Account what Mr. Layer declared before the Lords of the Council concerning these Receipts.

Mr. Doleys. The Account he gave—

L. C. J. Mr. Doleys, you was present at the Time of taking this Examination; you say you took Minutes in Writing; you have told us the Reason why it was not in French, and read to Mr. Layer: If you have not already done it, you may look to your Minutes, and refresh your Memory:

That which the Court demands of you is, what Mr. Layer did confess at the Time of his Examination before the Lords of the Council.

Mr. Doleys. He told the Lords, that he did write to Sir William Ellis, that he would send over some blank Receipts under the King's own Hand, that might be made Use of, for the carrying on this Case: That he did receive such Receipts, and his Intention was to have tried his Friends, and to have raised money on those Receipts.

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Mr. Doleys. He told the Lords, that he did write to Sir William Ellis, that he would send over some blank Receipts under the King's own Hand, that might be made Use of, for the carrying on this Case: That he did receive such Receipts, and his Intention was to have tried his Friends, and to have raised money on those Receipts.

Mr. Knolly. Whether that Case will be a Precedent? I never heard it so reckoned.

Mr. Knolly. And I hope it will never be one.

(Mr. Doleys sworn.)

Mr. Sir Geo. H. My Lord, Doleys, pray, give an Account what Mr. Layer declared before the Lords of the Council concerning these Receipts.

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Mr



L. G. 7. Who is that N. G.?  
Mr. Serj. P. My Lord, we do not know, it is directed to James

Barrow, Esq. Mr. Serj. P. says in the Cypher signifies the Provender.

Mr. Serj. P. says. Mr. Serj. P. appears to stand for my Lord Overy in the

Cypher.  
Mr. Serj. P. says. Look into the Papers, pray, what do Sir George stand for?

Mr. Serj. P. says. Read the Letter No. 21.

Mr. Serj. P. says. This is dated the 15th May, it is signed by Nobody,

and directed to any Body, the Cover is on: I received with a great, &c.

Dear Sir, I, &c. 27 May.

I received with a great deal of Pleasure, the Favour of your most obliging

Letter of the 24th, and with an inclosed for my Friend, who

was very glad to hear from you; and is very sensible of, and takes

great pleasure in the Care you take of his little Concern there; but says, he

cannot sufficiently understand the State you sent, so as to be able to

give particular Answer, till you shall further explain it; there being

several Names, mention'd by you, whose Names he does not find in the

State, as Barrow, Esq., Digby, the 6th Soldier, and Summerville;

he believes should be Summerville, he is of the North, a grey hair'd

Man, whose he very well remembers, and has a particular

Value for, as a very good Tenant, and a very honest Man.

All Friends here are in perfect good Health, God be thanked, and re-

member themselves kindly to you, and I am most sincerely,

Your's, &c.

Mr. Serj. P. says. If you look into the Cypher, you will find Rental funds

for the unknown Name for the Cypher still, Barrow stands for the Lord

Overy, that for the Regent, and Digby for General Digby.

Summerville, he believes should be Summerville, but Summerville in the large Cypher

must be Lord North and Digby, and who is meant, appears pretty plain

from the Cypher's own flow. He is of the North, a grey hair'd soldier

whose he well remembers, and has a particular Esteem and Value

for, as a very good Tenant, and a very honest Man.

Mr. Serj. P. says. Look for Summerville in the Cypher.

Mr. Serj. P. says. I can make one Observation, that Mr. Harmer is

not of the Cypher. It is alphabetized, so that it is only to look for it.

Mr. Serj. P. says. What Use do you make of these Letters?

Mr. Serj. P. says. The Use we make of them is to show that Mr. Loper

is there; I who can make any Objections to a Paper which we did know

nothing of; I believe I was in the Court know what the Meaning of these

Papers are, and you they are ready; for my Part, I know very little of them;

we apprehend that instead of being allowed to support this Evidence, by

proving a foreign Correspondence between Mr. Loper and the Provender,

by the Name of King J. Adels, which is made Treason by a particular

Act of Parliament; they ought rather to have indicted him upon that,

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L. G. J. If you will not hear me, you will reach me not to hear you.

Mr. *Stangerford*. My Lord, I have we have a Right to reply.

Mr. *Wyl*. Upon the first Letter of Sir William Ellis's he congratulates him, as his Friend, on his safe Arrival.

Mr. *Stangerford*. My Lord, I beg your Lordship's Pardon; I am in the service of my Client, and in endeavouring to do him Service, I am verily persuaded I shall not offend your Lordship: Really, for my part, I cannot fairly myself, that the Evidence which they tender to the Court is a proper Evidence.

This Gentleman is indicted upon the Statute de Præsumption, 25<sup>th</sup> Ed. III. The Overt Acts laid in the Indictment are, his conspiring, conspiring and agreeing to make a Rebellion, and to levy War against the King, &c.

There is an Act of Parliament in the last Year of King William, whereby the *Procurator* is authorized, which makes corresponding with the *Procurator*, or any of its Adherents High-Treason; and when any Man commits that particular Treason, he is liable to be taken up and prosecuted for it. Now, my Lord, shall they be admitted to give an Evidence of a Treason committed in breach of one Act of Parliament, when they are prosecuting him upon another, they may as well offer Evidence against him for committing the Great Seal, or clipping and coining for the sake of Evidence? We hope this Practice shall not be allowed; if they are so full of Proof (as by their opening they seem'd to be) by the Rules of Law can reach this Man's Life, which I cannot yet see, let Justice take its Course! But we humbly hope they shall not be permitted to give Evidence of Facts which are entirely foreign to the present Accusation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the *Procurator* hath been at *Rome*. But if the King's Council will have it effectually publish'd that the *Procurator* hath been at *Rome*, let them consent to have him found not guilty upon this Indictment, and let him then be prosecuted upon the Act, for corresponding with the *Procurator*, and for what will serve of it.

Mr. *Kentish*. The Act of Parliament that makes this new Treason is the 13 and 14 of King William; which not only make that Treason which was not Treason before, but puts it on a new Method of Trial in any County of England, where it is laid. Now they would give in Evidence a Fact, which Mr. *Serj. Popham* says Evidence of the same Kind of Treason, though in a lower Degree, and ought to be received to prove the Overt-Acts of conspiring and conspiring to rebel, and bring the *Procurator* to the Throne: As to the Evidence that hath been read we could not have objected to the Papers, because we did not know what they were, nor whether they related to a Foreign or Domestic Correspondence. Now, because they are read, so being found on a Person to whom he gave them; shall they, to support a Treason of conspiring and imagining the Death of the King, give Evidence of corresponding with the *Procurator*?

My Lord, I don't apprehend the King's Council live given in any manner of Answer; and therefore shall not take up any more of your Lordship's Time, by repeating in a Reply, what I offered before by way of Objection: I submit it to your Lordship.

L. G. J. Sure as this Evidence is offer'd it is very proper; consider, in the Indictment the Overt-Acts are, meeting, consulting, advising and agreeing to raise a Rebellion. The next is, publishing a Treasonous Libel; in which Rewards are promised to those that would assist in this Rebellion; a third Overt-Act is, the engaging and hiring Men for the Service of the *Procurator*; a fourth is, a designing to depose the King; and another is, to set up the *Procurator* on the Throne: Now, consider, if they have not given an Evidence of these Overt-Acts, whether sufficient or not, that must be left to the Jury, if they have given Evidence of these Acts, a Design to set up the *Procurator*, and to depose the King, &c. If they are not proper to shew for this Purpose this Gentleman corresponded with *Rome*, was with the *Procurator*, these Letters sent from Sir William Ellis to him: Letters (according to his Desire) purporting Receipts for Sums of Money to be signed by the *Procurator*, as a Foundation to oblige him to make Reparation: After this and these Things have been offer'd, is it not proper to go on as far as they can on this Head, and show how far he hath been engaged with the *Procurator* and his Accomplish? Sure it is proper, as a further Evidence of these Overt-Acts.

Don't trouble yourself in so that, no Use shall be made of that, to charge you with the Treason made to by another Act of Parliament, about conspiring with the *Procurator*, for Evidence it is proper here; and it neither can, nor shall be made use of to any other Purpose.

Mr. *Rose*. Mr. *Stangerford*, pray go on, and give an Account of what he confest, who examined before the Lords of the Council about his being at *Rome*.

Mr. *Stangerford*. My Lord, *Lay* did acknowledge he had been at *Rome*, and returned from thence in July 1711, he said he had had two Conferences with the *Procurator*.

Mr. *Kentish*. I think Mr. *Stangerford* had, he had taken Minutes of his Examination; I had rather see the Minutes they read to him in Memory. My Lord, on the Trial of the two *Baileys* in this Court, the Substance of what the *Deceased* said was recited into Writing; and therefore the *Procurator* Evidence that was offered to be given was rejected. I submit it to your Lordship, whether the Rule is not the same in greater Cases, and much stronger in this Point before your Lordship. I have not the least Doubt, for Mr. *Stangerford*, and could take his Word for any thing but my Client's Life, therefore, we hope he shall produce those Notes, which he hath refer'd to once or twice, now he is going to give a further Account of his Examination.

Mr. *Stangerford*. My Lord, I was Counsel in that Case; the Justice of Peace who had taken Mr. *Lay*'s Examination did not appear, and that Examination could not be had; there was a Copy of it taken and produced, and proved in Court to be a true Copy, but your Lordship would not let that Copy be read, or the *Substant* Matter of it to be given in Evidence, unless the original Examination itself was produced.

L. G. J. Mr. *Stangerford*, you hear how the Matter is, Mr. *Kentish* and Mr. *Stangerford* give an Account that they were committed by the Lords of the Council to attend and take Minutes of Mr. *Lay*'s Examination before them; that they have these Minutes, and have look'd into those Mi-

minutes to refresh their Memories! If they desire they may be produced, they you oppose it? Have you the Minutes here?—Mr. *Sus*. Yes, my Lord.

Mr. *Serj. Popham*. There may be a great many Things that are material to the present Case of Mr. *Lay*; why should they have all these Minutes read? It is as for the sake of the *Procurator* at the Bar, but for the sake of some other People, who may be listening here.

In the Case of *Lay*, there was a complete Examination taken by the Justice of the Peace. In this Case there is no Examination completed and drawn up; it is nothing but an oral Confession, and amounts to nothing. The Minutes the Witnesses may take in their Hands, as proper to refresh their Memories.

Mr. *Stangerford*. Their desiring to have these Minutes read, is not to make for the sake of their own Client as for the sake of other People.

Mr. *Serj. Popham*. Have the Minutes in that Case was—

L. G. J. It is enough, I only ask Mr. *Stangerford*, whether he thought fit to consent to it, and without his Consent, as are of Opinion, that they cannot be read.

I ask Mr. *Attorney the Question*, and was not aware of any ill Consequence.

Mr. *Attorney says*, the Minutes refer to the whole Examination, and to a great many other People, and it would be for the Difference of the King to have these Things disclosed. Mr. *Attorney* might have refused to consent without giving a Reason, but he hath given a good Reason, and therefore will not consent that they be read.

Mr. *Kentish*. We do not consent to waive them, but insist upon their being read.

Mr. *Stangerford*. We don't ask your Consent. Mr. *Kentish*. If you don't ask it, nor give it, we are so far even; but after you, Sir, we are retained only for one Gentleman, the *Procurator* at the Bar, and we have as little Reason to be solicitous for the Innocence of others, as some has for their Guilt.

L. G. J. You cannot read the Minutes taken against the King, because these Matters are not ripe yet, nor to be discover'd to the World.

Mr. *Stangerford*. Something dropp'd, as it were did insist upon the Minutes for the sake of others; they are mistakes, we condemn such an Intimation. We are of Counsel for this Man, and for this Man singly.

L. G. J. You are assigned Counsel for him, and unless you bid, I will give you no more than have ventured to have said so much.

Mr. *Stangerford*. No, no, no.

L. G. J. Go on.

Mr. *Serj. Popham*. Mr. *Stangerford*, please to recollect, whether when Mr. *Lay* was examined before the Lords of the Council, (it is to confirm the Evidence of Mr. *Lay*) any thing said about the Declaration.

L. G. J. But before you was intending to ask him about his going to *Rome*, and having Conference with the *Procurator*.

Mr. *Serj. Popham*. My Lord, that he hath said already, therefore I ask you what was said by Mr. *Lay* relating to the Declaration? Mr. *Stangerford*. The Lords ask'd Mr. *Lay*, if he had seen any Declaration; he said no, he had only the Heads of one which he drew himself. The Lords ask'd him where that Declaration was, he said, he believed it was in his hand.

Mr. *Serj. Popham*. Was any Question asked relating to the Period that had been it?

Mr. *Stangerford*. Yes; he said the only Person that had seen it was, the *Procurator*, one William *Jeffrey*, a Non-juring *Parson*, and one *Lynch*.

Mr. *Serj. Popham*. Where did he mention to have seen it to *Lynch*?

Mr. *Stangerford*. On his way to my Lord *North* and *Gry's*, at the *Great Hall* at *Exeter*.

Mr. *Serj. Popham*. Was there any thing more said by *Lay*, relating to his Journey to *Exeter*, and what?

Mr. *Stangerford*. He said that he went to my Lord *North* and *Gry's*, and alighted at the *Green-Mews* as he went; then he carried Mr. *Lay* to my Lord *North* and *Gry's*, and recommended him to my Lord *North* and *Gry* as a proper Person to be employed. I think it was employed in an Intercourse, or in any thing else, that his Lordship should command him.

Mr. *Kentish*. If it is not certain, I desire he may produce his Minutes, as he gives his Evidence now and so, to refresh his Memory.

Mr. *Stangerford*. We submit to it.

L. G. J. It is enough.

Mr. *Stangerford*. He recommended him, as a proper Person to be employed in an Intercourse, and that *Lay* having told *Lay* before that he would send the Earl of *Caughan*, that *Lay* did mention him to my Lord *North* and *Gry* as a proper Person for such an Attempt.

Mr. *Kentish*. The first time you said in an Intercourse, as you remembered or thought; how came you now to be more certain on the second Repetition of your Evidence that is the fifth? On the first Account you gave, you say it was employed in an Intercourse, as you thought; and upon the second Repetition you give a positive Evidence, that it was employ'd by Mr. *Lay*.

Mr. *Stangerford*. I have recollect'd the Words, and Mr. *Lay* said that Words.

Mr. *Kentish*. From whence it is that you are now so positive, and went not to at first?—Mr. *Stangerford*. I did say the Words at first.

Mr. *Stangerford*. But you said it with an Alleviation; I desire to know, if you are positive there were the Words?

Mr. *Stangerford*. I am very positive.

Mr. *Kentish*. And yet you were not positive before!

Mr. *Stangerford*. I did not say I was now positive.

Mr. *Stangerford*. Did you give your Evidence, that you was certain he said that he had recommended *Lay*, as a proper Person to be employed in an Intercourse in General, or only as a proper Person to raise my Lord *Caughan*, or both? How did he express himself?

Mr. *Stangerford*. I will tell you how the Words were: *Lay* having told him he would send my Lord *Caughan*, *Lay* recommended *Lay* to my Lord *North* and *Gry* as a proper Person for such an Attempt.

Mr. *Stangerford*. Then the Intercourse was out of the Case; he was only recommended to my Lord *North* and *Gry* as a proper Person to raise my Lord *Caughan*.



Mr. Knolly. I thank you have repeated it some times, and different at times, it is most pleads to satisfy your Memory. and let us have it said it is understood.

Mr. Knolly. I will desire it in this Case, my Client is upon his Life, and he should be able to say, I am sure he will have a from the Court and the Jury.

Mr. Knolly. I desire to know whether you give such an Evidence of this Part of his Confession, with respect to his recommending Mr. Lyle to my Lord North and Grey, as you will stand by?

Mr. Knolly. Mr. Stuyvesant, pray, give an Account once for all how your case went.

Mr. Knolly. I can give no other Account.

Mr. Knolly. He has said every Time, I appeal to Mr. Attorney. I appeal to your Lordship.

Mr. C. J. Where is the Variation?

Mr. Knolly. First he acquaints you, that he confessed, that he recommended Lyle to my Lord North and Grey, as a proper Person to be employed, whether he recommended him to my Lord North and Grey, as one that he was to be employed in an Infurrection, and at last he says, he was recommended by Mr. Lyle to my Lord North and Grey, as the fit Person to be employed by Lord Cayen. I appeal to your Lordship's Memory, and his own Oath, whether this was not so, and yet he is positive of it, he is sure of it.

Mr. C. J. Is there any Difference in all this?

Mr. Knolly. As much as between being certain, and being uncertain.

Mr. C. J. For what? You talk of the Variation between an Infurrection and being my Lord Cayen. The Infurrection was purely to be made in the killing my Lord Cayen, at the same time as to further the Infurrection, both were to go together, if he was a proper Person to be employed by Lord Cayen, he was a proper Person to be employed in an Infurrection.

Mr. Knolly. He is charging the Prisoner with his Confession, and therefore, I say, he hath confessed it with two or three Variations; First, That he was fit to be employed in an Infurrection, and he explains that by saying my Lord Cayen.

Mr. C. J. This is Part of the Infurrection.

Mr. Knolly. Surely, my Lord, this serves to make our Objection to the stronger against allowing Parole Evidence of a Confession, which was put in Writing.

Mr. At. Gen. I can't imagine what they mean, here is a Gentleman, that gives an Account, that the Prisoner confessed that he recommended Lyle to my Lord North and Grey, as a proper Person to be employed in an Infurrection, and to raise my Lord Cayen; where is the Variation then?

Mr. At. Gen. Mr. Stuyvesant, you were giving an Account of Mr. Lyle's recommending Lyle to my Lord North and Grey, did Mr. Lyle declare anything further relating to that Matter?

Mr. Stuyvesant. He said my Lord North and Grey received him civilly; he said there, and by there that Night, and they did not stir the next Day.

Mr. At. Gen. Did he give any Account of what passed at Dinner?

Mr. Stuyvesant. I don't know whether it was just at Dinner, or afterwards: But he said that several Healths were drunk, which were begun by my Lord North and Grey; and after Dinner there came in a Man they called a Citizen, they drank the Pretender's Health, his Wife and the young Prince.

Mr. At. Gen. Did the Prisoner say any thing about the Christening of his Child?

Mr. Stuyvesant. That was, when he confessed before the Lords that he was at Rome in the Conference he had with the Pretender, he took Occasion to speak of the Discontents of the Nation, which had been occasioned by Lyle's Infurrection in the South-Sea. The Pretender said he knew any Person of Distinction in that Case? He said, That he knew a great many that were well-affected to his Interest; that he was not acquainted with People of Quality, but that he knew several of good Estates that were very well-affected to his Interest. Upon this the Pretender asked him several Questions; says he, It must be very expensive to you to come hither to Rome, it must cost you good. No, faith he, not above half so much. Then the Pretender asked him Zeal, and commended him; after that Mr. Lyle asked the Pretender to give him some Tokens or Credentials, that might have something from his Majesty, that would be Means of his gaining Credit among his Friends here. He says the Pretender scrupled that: Then Mr. Lyle proposed afterwards that the Pretender's Wife should stand as God-mother to his Daughter, to Mr. Lyle's Daughter; then afterwards Col. Hy, to whom he was introduced at the Pretender's Court, brought him Word, that the Pretender's Wife would stand as God-mother to his Child: But then the Question was, who should represent her? And after some time it was proposed to Mr. Lyle to find out a Person to represent her: Mr. Lyle proposed the Dutchess of Ormond, which was agreed to; after that the Pretender agreed to stand God-father to his Wife, and then the Point was, who should represent him? And Col. Hy said he did not see what care of that, to find a proper Person to represent him.

Mr. At. Gen. What Account did he give of what was done in Purcell's Chamber, when he came into England?

Mr. Stuyvesant. When he came into England, he said, he applied himself to one Mr. Thompson, to speak to my Lord Orrey to stand to represent the Pretender with the Dutchess of Ormond: But he said my Lord Orrey declined it; and afterwards he got my Lord North and Grey to stand. That Mr. Thompson did choose his Child, my Lord North and Grey, the Dutchess of Ormond standing as Proxies for the Pretender and his Wife, my Lord North and Grey did stand to represent the Pretender, and the Dutchess of Ormond to represent the Pretender's Wife, knowing they did so.

And he was asked by the Lords, who were in Company at the Christening? He said, only the Dutchess of Ormond, my Lord North and Grey, Mr. Thompson the Minister, himself, an his Wife, and another Woman, at whose House the Christening was performed: But he said, this was not present in the Room, that he assisted at the Christening.

Mr. At. Gen. Did he mention any Time when this Christening was?

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Mr. Stuyvesant. When the Pretender I said, he came into England, he said he had acquired the Pretender with the Dutchess of Ormond, and that he had acquired the Pretender with the Dutchess of Ormond.

Mr. At. Gen. Did he say any thing relating to his being at the Pretender's Court?

Mr. Stuyvesant. He said that he was at the Pretender's Court, and that he was at the Pretender's Court.

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Delight, and he is certainly excusable; but as for the other three, *Lynch*, *Paynter*, and *Moss*, when you shall have heard half what we have against them, I dare say they will not have the least Credit, though they should give a much more probable Evidence than they have done. But had given a much more probable Evidence than they have done. But had given a much more probable Evidence than they have done. But had given a much more probable Evidence than they have done.

*Mr. Harg.* My Lord, we shall call our Witnesses, and begin with my Lord North and Grey.

*Mr. At. Gen.* We desire to know what it is you call my Lord North and Grey to prove.

*Mr. Harg.* He is to give an Account of what passed at his House, what *Mr. Lynch* said when he was there.

*L. C. J.* Then you do admit that he was at the Green Man, and he was to my Lord North and Grey's afterwards?

*Mr. At.* There is their Short-Anchor.

*Mr. Harg.* We admit we were at the Green Man, but committed no High-Treason there; your Lordship hath set us right in the Point of giving our Evidence in the Nature of this Translation; it is proper to begin with the Master of the Green Man.

(*Mr. Madstock sworn.*)

*Mr. Harg.* Mr. Madstock, Pray, give my Lord and the Jury an Account whether Mr. Loper or Mr. Loper was at your House last Summer, or how long they were there?

*Mr. At.* I think you are Master of the Green Man?

*Madstock.* Yes, Sir, upon the Oath I have taken, I don't know that Mr. Loper was ever at my House.

*Mr. At.* Do you remember any thing of the Saturday the 25th of August?

*Madstock.* No, I can't.

*Mr. At.* Do you remember whether you were at Home that Day?

*Madstock.* I can't tell: It was on a Saturday; on Saturday I often attend the Justices at *Norfolk*.

*Mr. At.* Do you know whether you was at Home that Day?

*Madstock.* I cannot tell.

*Mr. At.* Do you know Mr. Loper?

*Madstock.* I never saw him before in my Life, as I know of.

*Mr. At.* Was there any Enquiry after him at your House?

*Madstock.* No: There was the Duke of *Griffin* and my Lord *Hedge* came to my House last time. The Duke of *Griffin* intimated something of this Affair, the Duke of *Griffin* said to me, You are to be waded; Harg's, for what? said I. You and your Friend *Loper* are to be waded. Said I, I never saw him in my Life. They walked to and fro the Hall. What, said they, do you know nothing of this *Loper*? No, I don't, as I hope to be saved, directly nor indirectly.

(*Mr. Madstock sworn.*)

*Mr. Harg.* Pray, do you remember any Travellers at your House upon the 25th of August last?

*Mr. At.* Do you remember when Mr. Loper was at your House?

*Mr. Madstock.* I never saw the Gentlemen in my Life, as I know of, Mr. At. Are you constantly at Home?

*Mr. Madstock.* Yes, I have hardly time to go to Church.

*Mr. At.* Did you ever hear any thing of a Declaration read?

*Mr. Madstock.* I never heard any thing of it in my Days, my Lord.

*Mr. Harg.* Pray, do you know the Room one Pair of Stairs farthest in the House?

*Mr. Madstock.* They are all forward, my Lord.

*Mr. Harg.* How far is the Bar from the Room?

*Mr. Madstock.* My Bar is about Stairs even with the *Stew-Cafe*.

*Mr. Harg.* If any thing is read there aloud, in any of those Rooms or Pair of Stairs, could you have heard it?

*Mr. Madstock.* To be sure, my Lord.

(*John Paynter sworn.*)

*Mr. Harg.* Do you remember any thing of this Gentleman being at your Master's House on the 25th of August last?

*Paynter.* I remember nothing at all of it.

*Mr. Harg.* You remember nothing at all of it.

*Paynter.* No; to my Knowledge I never saw him before in my Life.

*Mr. At.* Do you remember any thing of some People during there on a Road-stake?

*Paynter.* No; I don't remember any thing of it.

*Mr. Harg.* Do you remember this Gentleman's Face again?

*Paynter.* No; I don't remember that ever I saw him before.

*Mr. Harg.* Is my Lord North and Grey there?

*Mr. At.* We shall examine my Lord North and Grey only as to these Particulars at my Lordship's House, and chiefly as to the Character of this *Lynch*, and what a Character he gave of himself, generally, a Man will give a good Character of himself, but he did otherwise.

(*Lord North and Grey sworn.*)

*Mr. Harg.* If your Lordship pleases to give my Lord and the Jury what Account you have of one *Lynch*.

*Lord North and Grey.* My Lord, that Gentleman that goes by the Name of *Lynch* I saw twice; he came twice to my House in *England*; I have thought that my having been there twice, at my House, should be the Occasion of my coming here in such a manner. The Gentleman was wholly a Stranger to me, and I have never seen him since. As to myself, I cannot say I know any thing of any person.

*Mr. At.* The only thing I can say is, what he said of himself. I saw *Lynch* at a Man of Honour to my Conversation, who passed us in a Boat, a Wine is Dismissed, but since your Lordship requires it, I will follow.

The effect of our Discourse was—He is reported to me to be a stranger newly come to *England*, and he is a Man of Honour and Goodness. He was introduced, and brought there, according to my Lord's, and I received him civilly. In the first of June he called on the History of His Life that; that he was not a *Spanish*, but an *English* Man, my Lord, I think, educated in the Company under an Uncle of his.

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He told, that when he was a young Man, he had taken a great many

Liberty.

*Mr. Serj. Poy.* My Lord, we humbly apprehend, this Evidence is not proper to be given. If they have any particular Questions to ask of my Lord, let the Council propound them, or ask my Lord North and Grey to the Character of Mr. Lynch in general: But thus to give an Account (by way of Repetition of a Dialogue between Lord North and Grey and Mr. Lynch) where he was born, and where he was bred up, and to give a History of particular Facts, is what they ought not to do.

*Lord North and Grey.* I am glad to be interrupted by that worthy Gentleman. I only desire to know to what Points you would be pleased to ask me.

*L. C. J.* Mr. Hargrave, you know what the Rule of Practice is: Evidence is, when Object only are made to the Court, and Pleas are made to the Witness, you can't charge him with particular Offences. For if that were to be allowed, it would be impossible for a Man to defend himself. You are not to examine to the particular Facts to charge the Reputation of any Witness; but only in general you are to ask what his Character and Reputation is.

*Mr. Harg.* My Lord North and Grey is an entire Stranger to him, but he was only going to tell you what Account *Lynch* gave of himself.

*L. C. J.* That is very well. Consider, if that is not the Case as it you were to charge him with particular Facts. You say, he himself, when he was with that noble Lord at his House, gave a Character of himself much to his Disadvantage. It is impossible for him to give a Case to give an Answer to it, therefore by the Rule of Evidence, you cannot do it.

*Mr. At.* If that noble Lord was going to give a Character of him which he heard from other Persons it might alter the Case. But say by what the Character he gives of him is grounded upon what he said of himself, is not that much stronger than the History of others, the Talk or Statement? The Character is all of this: *Lynch* is a fine gentleman, therefore we hope he shall give it to us.

*Mr. Harg.* If they won't let the noble Lord enter into a Relation of what Character this *Lynch* gave of himself, we cannot help it.

*L. C. J.* You know, if there be any Object as to him, to his general Character, he can answer them. But if Object as to particular Charges of his being a thief, an assassin, and so on, all this, not having any Notice of this, it is impossible for him to defend himself.

If you will ask my Lord North and Grey what general Character he gave of himself, you may.

*Mr. Harg.* If my Lord be true, the whole Ten Commandments have been broken by him.

*L. C. J.* Very well; and do you charge him with the Breach of the Ten Commandments, and he will let it go for Fact, because he cannot have an Opportunity of defending himself.

*Mr. At.* What Character in general did he give of himself to your Lordship?

*Lord North and Grey.* I don't know how to answer it, as to his giving a general Character of himself. That much I must say, I saw him twice.

The first Time he was brought down by the Gentleman at the Bar; the second Time he came, he was all recited; and I observed it should be said him, that is all he deigned to say then, that I had no Room or any Lodging for him. As to particular Things, I don't care to speak of them. I should be very sorry to say it when it was said at my Company, and under my Roof.

*Mr. Harg.* We will not press it any further.

*Lord North and Grey.* I must beg your Lordship's leave, if the Gentlemen have no farther to say to me, and your Lordship have no farther Commands, that I may return to my Prison.

*Mr. At.* I hope you will make way for my Lord North and Grey thro' the Crowd; And, if your Lordship pleases, we will go down with our Excellence.

(*George Talbot sworn.*)

*Mr. Harg.* Pray, give my Lord and the Jury an Account of what you know of Mr. Lynch—Mr. Stephen Lynch, what Character he hath?

*Talbot.* Why, Sir, the Character I know of him is this, that he is a Man that hath been so extravagant, that he hath brought himself to his Necessity by it, kept very infamous Company.

*Mr. Harg.* What Character hath he? Hath he the Character of an honest Man?

*Talbot.* He hath a very indifferent Sort of a Character.

*Mr. Harg.* Hath he got a good or a bad Character?

*Talbot.* The Character I saw him of him is a very bad Character.

*Mr. At.* We don't ask you as to the Particulars of his Life and Conversation, but only the General Character he hath, and the Opinion in the World hath of him; whether he hath the Character of an honest Man, and is a Person fit to be believed?

*Talbot.* The Character I have had of him is, That he is not to be believed.

*Mr. At. Gen.* How long have you known him?

*Talbot.* I have not been his six Years.

*Mr. At. Gen.* What is your Employment?

*Talbot.* I am not able to follow any thing in it.

*Mr. At. Gen.* He told he hath one; but how long has he been in it?

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*Talbot.* I am not able to follow any thing in it.



( Mr. Wachenan sworn. )

Mr. Hangerford. Pray, give my Lord and the Jury an Account of what you know of this Stephen Lynch.

Witness. I knew this Gentleman fourteen Years ago in the Island of the Canaries, there he kept us Irish Gentlemen Company, some English, he was then well-below'd by every body: The Gentleman took him into his Company, and afterwards he grew extravagant, and the Gentleman turn'd him out of his Company.

Mr. Hangerford. Is he accounted an honest Man, or a Knave?

Witness. I will not trust him for any Thing.

Mr. Hangerford. You say you won't trust him for any Thing?

Witness. No.

Mr. Hangerford. The wider you.

Mr. K. Is he a Man to be trusted? Can you believe what he says?

Witness. I think I would not believe him.

Mr. K. You are right.

( James Darcy sworn. )

Mr. K. How long have you known Mr. Stephen Lynch?

Darcy. About a Twelve-month.

Mr. K. I don't ask you as to his particular Life and Conversation, but in general what is his Character, is he a Man to be believed or not?

Darcy. I don't take it that he is.

Mr. K. Where do you know him?

Darcy. I fell know him last Winter in London.

Mr. Hangerford. Is Sir George Fitzgerald there? My Lord, here is a Complaint made that the Witnesses can't be let in.

L. C. J. They must be let in.

Mr. K. Who made the Complaint?

Mr. Hangerford. A Gentleman here in Court.

Mr. S. G. It is in the Business of your Solicitors to take care that way be made for your Witnesses.

Mr. Hangerford. It is not the Business of your Witnesses to stop the Passage.

Mr. S. G. They don't stop the Passage.

Mr. Hangerford. No, what is your holy Colonel there (pointing to Col. East) is to say.

Mr. S. G. We must stay here half an Hour for every Witness.

Mr. S. G. Fitzgerald did not appear, then Mr. John Blake was sworn.

Mr. Hangerford. Mr. Blake, do you know Stephen Lynch?

Blake. Yes, sir.

Mr. Hangerford. Pray, give my Lord and the Jury an Account of him, whether he is a Person to be believed or not?

Blake. I heard a very ill Character of him about six Years ago. I have heard that he married a Whore.

Mr. Hangerford. Is he to be believed or not?

Blake. I know nothing but by hearsay, I believe he is not to be believed, because I have heard such a bad Character of him.

( Colhim sworn. )

Mr. Hangerford. Will you give my Lord and the Jury an Account of what you know of Stephen Lynch.

Colhim. Sir, I never exchange'd a Word with him.

Mr. Hangerford. What Character hath he?

Colhim. A very infamous Character. I know him by Eye-sight only.

Mr. Hangerford. Is he a Person to be believed or not?

Colhim. No, I believe not.

( Mr. French sworn. )

Mr. K. Do you know Stephen Lynch?

French. I know him by Eye-sight.

Mr. Hangerford. What Character hath he, is he a Person to be believed or not?

French. I don't think he is.

Mr. Hangerford. How long have you known him?

French. Six or eight Months.

( Mr. Kelly and Mr. Blake sworn. )

Mr. K. Mr. Kelly, how long have you known Stephen Lynch?

Kelly. I believe I have known him since the beginning or middle of April.

Mr. K. What is his Character, is it an honourable Character?

Kelly. I never heard any give him a Character that was not very vile.

Mr. K. Mr. Blake, how long have you known Stephen Lynch?

Blake. Sir, I never had any Acquaintance with him, but I have heard he had a very bad Character.

Mr. Hangerford. Have you had any Discourse about this Trial, have you heard any thing said by Lynch himself, about the Matter that is now in Judgment before this Court?

Blake. There was one Mr. French, a particular Acquaintance with Lynch, I met Mr. French, hearing he was of the same Inn with me, (I belong to the Middle Temple) and he told me he wanted Money.

Mr. S. G. You know what he told you is not Evidence.

Blake. Sir, he there is one Mr. Lynch owes me a good deal of Money, and I want to go and see him, and I have no mind to go there by myself. Next Day

he was then come to the Danger in that when we came to him, I suspect, says Mr. Lynch, that you came for some Money that I owe you. Upon that, he desired him to sit down, and told the Gentleman he was sorry he had disappointed him. Then he began to talk of my Lord North and Grey, and my Lord Corry, and Mr. Lyle I believe I shall hang him out as to my Lord North and Grey, and my Lord Corry, I know nothing of them: I know nothing more of Mr. Lynch, but what I have seen him himself. Some Words pass'd between him and me, and at last of my Lord Troubridge, he said my Lord Troubridge, was a great deal of money, but my Lord Corry was of a better Temper.

Mr. K. Speak to the Purpose, I desire to know what you can say of Mr. Lynch's Character?

Blake. I don't know any thing of Lynch, but that he is of an infamous Character.

Mr. K. What did he say of Mr. Lyle?

Blake. He said he would hang him.

Mr. K. Did he say any thing about the Violence of the Plot, or why or how he thought it his Duty to discover such Villany?

Blake. No, I don't know of any such thing. I heard him say, Circumstances are very poor; and the Motive that induc'd him to do so was to save the Lives of a thousand People.

Mr. Hangerford. Did he speak any thing of getting Money?

Blake. No, I can't say any such thing.

L. C. J. That is not a fair Question.

Blake. I can inform your Lordship more: Sir, he, I was forced to this; but I had got off from this Affair; I would fight any dozen of pie in London to come off from it.

Mr. S. G. Where do you live, sir? Do you live in the Middle Temple?

Blake. No; I live at Mr. Ireland's in Portugal Street.

Mr. Hangerford. In the Conversation with him and Lynch, was talk of any Money he was to have?

Mr. S. G. You ask'd him that Question before, and was told it was a fair Question.

Mr. Hangerford. I think I did not. Mr. Darcy, what do you move of Mr. Lynch?

Darcy. Sir, I want to see Mr. Lynch on Account of some Money I lent him, and when he was taken up in Manchester-Garth I went to him; after he received me civilly, I took him aside and ask'd him for Money. I told him I freely, and asked him how he got Money and several fine Cloaths which he had; he told me a Lady us'd to come near to a Week to visit him, and then Lady was the Mother or Daughter of one of the Chief Ministers of England, he said this Woman—

L. C. J. You must not put him in this way.

Mr. K. Mr. Blake, have you given an Account of the Character of Lynch? I don't ask you the general Character.

Blake. I have told you already.

Mr. Hangerford. I have two or three to the same Purpose.

( Terry sworn. )

Mr. Hangerford. How long have you known Lynch?—Terry. Seven Years.

Mr. K. What is the Character of an honest Man?

Terry. He hath the Character of being a honest young Fellow; that is I know of him.

Mr. K. Is his Character good or bad?

Terry. His Character is good.

( Mr. Hamilton sworn. )

Mr. Hangerford. Do you know this Stephen Lynch?—Hamilton. Yes.

Mr. K. What Character is he of, is he to be believed?

Hamilton. No, I believe not; I was cautious of keeping him Company, I believe him to be of a vile, infamous Character, that will do our Country no good.

Mr. Hangerford. We leave the Character of this Lynch here, with a Weight of the Blame cast'd upon him by our Witnesses, to the Consideration of the Jury.

There is another of the Witnesses, Mr. Plunkett, to whose Character we shall likewise examine. We shall call a Witness or two to that state, and then we shall close.

( Mr. Thomas Brown sworn. )

Mr. K. Do you know Plunkett?

Brown. Yes, I have known him these ten Years.

Mr. K. What is his general Character?

Brown. He hath been an indifferent Character.

Mr. K. Is he a Man to be believed?

Brown. No, my Lord, I don't believe he is.

( Mr. Keating sworn. )

Mr. K. Have you known Mr. Plunkett, and how long?

Keating. I never had any Knowledge of him before the Beginning of July last.

Mr. K. What Character and Reputation hath he? Hath he a good or an ill Character?

Keating. I will tell you: About the Beginning of July last a Man that overtook me on a Horse of his Name.

Mr. S. G. My Lord, we shall oppose the going into Particulars; they know they are confined to examine as to his general Character only.

Mr. Hangerford. But if the Gentleman will follow some of your Examples, and introduce himself by Prefaces, we can't help it.

L. C. J. To a general Question you must give a general Answer.

Keating. The Knowledge I have had of him, I never knew any thing tolerable in his favour; I never heard a good Character of him.

Mr. K. Did you ever hear a bad one?

Keating. Yes, a very bad one, that he was a drunken, idle Fellow, a weak Creature, and so on.

Mr. K. And from the Character you have had of him, do you think there is any Credit to be given to him?

Keating. No, I don't think there is.

Mr. Hangerford. My Lord, here we produce a Man of Quality, Sir Daniel O'Connell.

( Sir Daniel O'Connell sworn. )

Mr. Hangerford. Do you know Plunkett?

Sir Daniel. Yes, Sir, I do.

Mr. Hangerford. Pray, what is his general Character?

Sir Daniel. I can give no good one of him; for he is a naughty bad Character he hath; he caus'd his Colonel to be brought to Town to be examined—

Mr. K. I only ask you in general, don't enter into the Particulars; I only ask in general, from the Character he hath in the World, do you look upon him as a competent Witness to be believed against another Man?

Sir Daniel. I would not take his Evidence to hang a Dog.

Mr. Hangerford. And here he attempts to hang a Postoffice!

( Mr. Thomas Spelman. )

Mr. K. Do you know this Plunkett, and how long have you known him?

Spelman. I have known him for six or eight Years.

Mr. K. What is his general Character in his Life and Conversation?

Spelman. I never knew any ill done by him.

Mr. K. What is his Character?

Spelman. I can't give any Character of a Man I don't know. All I know of him, is about a Dispute between him and Sir Daniel O'Connell about a Horse, and his desiring the Lawyer to see Sir Daniel.

Mr. Hangerford. Did he not say something before that?

Spelman. He said, the Lawyer he employed would do him Justice.

( Mr. K. G. )



Mr. An. Gen. You say you don't know any ill Character of him?  
Spelman. No, I don't.

(Edward Barnwell sworn.)

Mr. Hove. Do you know this Plaintiff, what is his Character?  
Barnwell. Pray, let me tell you, I have been examin'd twice upon this Account. The first time that I brought Plaintiff to be acquainted with Mr. Lope, Mr. Lope's Man brought me word and said, Mr. Lope had his Goods seized wrongfully, upon that I sent Plaintiff to the Sheriff, to buy two hundred Balliffs that have wrongfully seized his Goods, you must send and turn them out. He did go with the Soldiers, and turned the Balliffs out of the House, upon which Mr. Lope gave him Half a Crown. After that Mr. Plaintiff had no Friend but me; and he came and paid me, and desired me to apply to Sir David Correll, for some Money he said he owed him for a Horse. I told him I thought it was wrong to give Sir David upon that Account.

Then about eight Months ago he came to me, and said he had met Mr. Lope in London's Jew-Fields, and that Mr. Lope did not know him; I told him so, says he, I am one of those that sent him at such a time, and that he had given me Half a Crown, and that then Mr. Lope remember'd him. This is all I know, I'm sure, and will tell the Truth.

Mr. Hove. Is he a Man as may be believ'd, even upon his Oath, or not?

Barnwell. I must tell you, that I found him in many Mistakes about his own Wife, that, by God, I would not take his Word for a Halfpenny.

Mr. Hove. This contradicts what Mr. Plaintiff says said between him and Mr. Lope in London's Jew-Fields, with respect to the giving him Half a Crown, it seems to be the former Service.

L. C. J. How dost it? I'm to learn again. Plaintiff swears, that he came with him under a Gate-way, and there, after he had talk'd with him, he gave him Half a Crown. This Gentleman owns he gave it to him for the Service he had done at some distance of Time before.

Mr. Hove. Go on, but don't fear by God any more.

Barnwell. I am a Soldier, a Man of Honor, of eighty years of Age, and would not do as ill thing for the W of d.  
Gentlemen, as I have been sent for by your Ministry and examin'd in the Court, it hath been said, Mr. Plaintiff hath made me write a Letter to some Court Captain, and think Men were obliged to give in Ball, and he would pay for the Charges.

Mr. An. What did Mr. Plaintiff say to you, in relation to what said between you and Mr. Lope?

Barnwell. He told me Mr. Lope gave him Half a Crown, in kindness for the Service he had formerly done him, in turning the Officers out of his House.

(Mr. Matthew Phylips sworn.)

Phylips. Do you know Plaintiff?—A. Phylips. Yes.

Phylips. What Character hath he?

Phylips. I think, by what I have known by him, he is not to be believ'd.

Phylips. Is that his general Character?

Phylips. It is; that every body gives him that knows him.

(Alexander Phylips sworn.)

Mr. An. Do you know Plaintiff?—A. Phylips. Yes.

Mr. An. How long have you known him?

Mr. An. What Character hath he?

L. C. J. I never heard the like; when you give the Character of a Man, you give that Character by Men that have not known him above seven or twelve Weeks.

Mr. Hove. Have you ever had any dealings with him?

Phylips. No, nor I, but my Uncle hath.

L. C. J. Well, of your Witnesses have known him but a little time, seven Weeks, eight Weeks, eleven Weeks, &c. It would almost make a Man suspect, that these People have been set up on purpose to give an ill Character of these People on this Occasion. To talk of seven or twelve Weeks Acquaintance!

Mr. Hove. That Man is credulous in I don't know how, but Sir David Correll is troubled about and cannot get out; Sir David is a Gentleman of Merit, and as such hath been distinguished by the Government, and ought to be treated a little better.

(Patrick Mabeen sworn.)

Mr. An. What Character hath Mr. Plaintiff?

Mabeen. I have known Mr. Plaintiff several Years, and that he was an ill, drunken Man, and a great Lye, and not to be believ'd.

Mr. Hove. He would lie before and behind, I think you say?

Mabeen. Yes, he did.

Mr. An. Do you think he is to be credited, if he comes to give Testimony against a Person?

Mabeen. Upon my Word I think he is not, by what he told me; because I have found him to lie backwards and forwards.

(Mrs. Child sworn.)

Mr. An. Mr. Child, Pray, have you had any Discourse lately with Mr. Plaintiff the Sergeant?

Mrs. Child. I never had any Discourse with him but that Day my Husband was confin'd, where I run to look for Mr. Plaintiff's Wife, and Plaintiff's Wife was not at home, but was gone to see her Husband of the Mellenger's, I went thither; Mr. Plaintiff hearing I was at the house, he desired that I should come in. Soith he, Mrs. Child, How comes it that your Husband doth not come to see me? You know, says I, upon what Account my Husband absents himself. Why, he is not taken up yet? Yes, says I, he is, and confin'd upon your Account. He then by the Hand, he takes me into the Coal-Hole, and asks notice when I say to you, and get to your Husband and tell him quickly. And he told me, that he took my Husband to a Lawyer that was going to pay the R. that Sir David Correll owed him, and the Lawyer would not let him, and so they came away together.

Mr. An. Gen. She speaks much to the Purpose: For she confirms what Mr. Plaintiff swears.

Mr. An. What did Plaintiff say?

Mr. Child. He said, he was going to get a Settlement; at Law.

Mr. An. What was he to get a Settlement for?

Mr. Child. For what he said at Mr. Lope's, a Story he had told me of my Husband.

L. C. J. You have called a great many Witnesses to the Disreputation of Mr. Child and Plaintiff, to say they have generally ill Characters, are all vile, infamous fellows, and not to be believ'd; and there is the substance of all your Evidence if you say here till To-morrow Morning.

(Alice Dore sworn.)

Mr. An. Do you know what Character Plaintiff hath?

Alice Dore. What Character I had seen himself, that he liv'd with another Man's Wife.

Mr. An. Hath he a good or bad Character?

Alice Dore. He hath a bad Character.

Mr. An. Is he to be believ'd?

Alice Dore. No, he is not to be believ'd.

(John Richmond sworn.)

Mr. An. Here, Richmond, have you seen Plaintiff lately?

Richmond. No.

Mr. An. How long is it ago since you saw him?

Richmond. About three Weeks ago and more.

Mr. An. What Discourse had you with Plaintiff at that time when you saw him?

Richmond. Plaintiff ask'd me if I was a Sonnet of Mr. Lope's? I said, I was, and in Discourse I ask'd him if he had ever receiv'd any Money of Mr. Lope for the Use of the Pretender? He kneel'd down upon his Knees, and thrack himself upon his Breast, and said, he never had receiv'd any Money of Mr. Lope for the Use of the Pretender in his Life-time.

Mr. An. How long is that? Is it three Weeks?

Richmond. I believe I'm about six Weeks ago.

Mr. An. Where was a prison before you?

Richmond. I am or was, still in the Room.

L. C. J. I would be glad to know, that he never receiv'd any Money for the Use of the Pretender. What do you mean by that?

Richmond. He kneel'd down upon his Knees, and said, he wished he might be damn'd if ever he receiv'd any Money for the Use of the Pretender.

Mr. Hove. Your Lordship may remember Mr. An. says, that Lope gave him Half a Crown at one time, and other Mr. An. says several other times; and now he solemnly swears, upon his knelt Knees, that he never receiv'd any Money for the Use of the Pretender, that is, upon his Accounts.

L. C. J. When you are drawing Consequences from the Expressions, consider what their Expressions are; He solemnly protesteth that he never receiv'd any Money for the Use of the Pretender. It doth not appear that he did; nor did he say that he did. Well, go on.

Mr. An. My Lord, we will leave it here as it stands. We will beg leave to call five Witnesses as to Mrs. Mabeen's Character.

(Mrs. Clayton sworn.)

Mr. An. Do you know Mrs. Mabeen, or Mrs. M. J. or Mrs. Herbert, or what do you call her?

Mrs. Clayton. I know her by all those Names: Babel is the name she always used to go by, the last name by the Name of Mabeen, and Babel, and Herbert.

Mr. An. What is her Character and Reputation?

Mrs. Clayton. Very infamous.

Mr. An. Is it bad or good?—Mrs. Clayton. Very bad.

Mr. An. Have you had any Talk with her at any time about Sir John Mabeen and his Man Thomas?

Mrs. Clayton. I have heard her say that—

Mr. An. They are asking what the Witness hath heard Mrs. Mabeen say at any time about Sir John Mabeen and his Man, which brings to a particular P. I, but is not a proper Question.

Mr. Hove. What have you heard her say about any P. r.?

Mrs. Clayton. I see her have a prison Book; I said to goodness when Mrs. Mabeen lodged, and a very good Day there, I saw a Gentleman's Room, which was Mr. Lope's. He had sent a Poet to Mrs. Mabeen.

When the case, says he, the Parliament-man I was speaking of is not provided of the good. I have a good Mind to lend it him.

Mr. Hove. Pray, how does Mrs. Mabeen get her living?

Mrs. Clayton. By deluding young Women, and carrying them about for Money.

Mr. An. That is to say a Bawd; is it not so?—Mrs. Clayton. Yes.

Mr. An. Did you hear of any Reward, the way, live by consequence? Mrs. Clayton. She said the way to be paid, or else she would not do it.

L. C. J. What do you mean? You have been often admitt'd by the Court; but it signifies nothing. You are charging Mrs. Mabeen with being a Bawd, when you ought only to enquire as to her general Character.

Mr. An. I ask'd you generally the Question, whether she had a good or a bad Character?

Mrs. Clayton. I did answer that Question.

L. C. J. At this rate the most innocent Persons may be branded as the most infamous Villains, and it is impossible for these to defend themselves.

(Mrs. Perce sworn.)

Mr. Hove. What do you know of this Mrs. Mabeen?

Mrs. Perce. I know I lodg'd in the House where she did lodge.

Mr. Hove. What Character hath she, a good one or a bad one?

Mrs. Perce. A very indifferent one, neither good nor bad.

Mr. An. Is she to be believ'd or credit?

Mrs. Perce. No, she is not to be credit.

Mr. Hove. Had she a good Reputation or an infamous one?

Mrs.



Mrs. Paine. She hath a bad Reputation.  
Mr. Serj. Pausely. You have seen Mr. Lyster there?  
Mrs. Paine. Yes.

(Mrs. Willoughby sworn.)

Mr. Kestley. Do you know this Mrs. Mayes?  
Mrs. Willoughby. I don't know Mrs. Mayes, but I know Mrs. Brown.  
Mr. K. What Character hath she?  
Mrs. Willoughby. I know her to be a vile Woman, and doth not care what she says, or what she doth.

Mr. K. Is that her general Character?  
Mrs. Willoughby. Always since I have known her.  
Mr. K. How long is that?  
Mrs. Willoughby. About two Years.

(Mr. Dyer sworn.)

Mr. K. Mr. Dyer. Do you know Mrs. Mayes?  
Dyer. I know Mrs. Brown.  
Mr. K. How long have you known her?  
Dyer. She lived with me thirteen or fourteen Years ago.  
Mr. K. What was her Character then?  
Dyer. She robbed my Shop, and I sent her to Bridewell.  
Mr. K. What is her Character and Reputation now?  
L. C. J. I desire you to forbear that irregular Practice.  
Mr. Hangerford. Is this Woman to be credited or not?  
Dyer. I know nothing of that.

(Mrs. Baskin sworn.)

Prisoner. Had you any Conversation with Mrs. Mayes?  
Mrs. Baskin. No, Sir, I don't know her.  
Prisoner. Had you any Conversation with her?  
Mrs. Baskin. I don't know her.  
Prisoner. Nor Mrs. Baskin?—Mrs. Baskin. No, I don't know her.  
Prisoner. Nor Mrs. Brown?—Mrs. Baskin. I don't know her at all.  
Prisoner. Do you know Mr. Lyster? Have you seen him lately?  
Mrs. Baskin. I saw him last Night.  
Prisoner. Do you hear him say what Reward he was to have for swearing against me?  
L. C. J. That must not be.

Prisoner. Do you not hear him say he was to have good for swearing against me?

L. C. J. We have a Compassion for you, and therefore hear this from you, which we would not from any body else.

Mr. Serj. Gen. My Lord, this is not to be endured. The Prisoner turns about to the Jury, and tells them that Lyster said he was to have good.

A Year.

Mr. Hangerford. I believe the Gentleman that sat next to him did not hear him.

Mr. Wray. My Lord, I did hear him say to the Jury, that Lyster said he was to have good a Year.

L. C. J. I must tell you, if you did not consider of what little Consequence it would be to you, you would not do it: When you thought fit to make him your Confidant, carry him to the Green Alder with you, and to my Lord North and Grey's; and there he was entertained courteously by him; and you came now to brand him with being an ill Man?

Prisoner. Lyster says himself, that he did not know me till Year last; and how could I have so much Friendship for him on so short an Acquaintance?

L. C. J. Then for this Woman, if you would do service to yourself, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand; prove something of that, and these Proofs will be of more Service to you than ten thousand of these Witnesses.

Prisoner. My Lord, if I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Mr. Harg. It was never proved to be his Seal.

L. C. J. You are mistaken: The Woman swore it was his Seal, and the Officers swore they were under the Seal when they seized them; and it is proved now to be his Seal, for the Seal is visible.

Prisoner. How do they prove it to be my Seal? My Lord, it is not my Seal, I desire Major Barnwell may be asked as to this Woman's Character.

Maj. Barnwell. I know her. She is a vile Woman; she had like to have cheated me of 1500*l*.

Prisoner. You are only asked as to her Character in general. Is she a Woman to be credited, or not?—Major Barnwell. No, she is not.

Mr. K. I hope you are satisfied with this general Answer.

Mr. Harg. They won't let us go into Particulars; that the Course of Practice won't allow.

Mr. K. It is impossible for us to direct the Answers to the Questions.

(Mr. Leake sworn.)

Prisoner. Mr. Leake, pray, give my Lord and the Jury a general Account of this Mrs. Baskin, or Mrs. Mayes, whether she ought to be credited or not, or gone Court?

Leake. No: She would take any Body's Life away for the Value of a Farthing.

Mr. Harg. Now, my Lord, we will elide our Evidence as to the Character of these Women against the Prisoner at the Bar: We hope we have proved their Characters to be (in inference, as no Jury upon Earth will believe them. Here is that to be observed—

Prisoner. I beg Pardon; here is mighty Talk of my Arms: I am so fortunate to have a Person here that will give you an Account of them, and how they came to be brought thither.

(Mr. Brown sworn.)

Mr. K. What Trade are you of?  
Brown. A Gunsmith.

Mr. K. Did you make any Firearms?

Prisoner. No; pray, let me ask him: Pray, give my Lord and the Jury an Account of a Blunderbuss, a Fusée, a Carbine, and Pistol; what you know of them. Did not you owe me six Pound on a Nose under your Hand?

Brown. My Lord, some seven or six Months ago, Mr. Lyster had a Low Suit for me: I sold him a Pair of Pistols, and a little after I sold him another Pair: Mr. Lyster had them for a Debt: He had on his House two Guns. I promised Mr. Brown a Gun when the Cause was over, on Head of Money. I gave him one of those Guns: There is another Gun, and a Musket which Mr. Lyster had of me.  
Mr. Lyster had a Nose for six Pound, which I owed him: I imported him to take a Carbine for a Man to ride with, and a Blunderbuss for his House, in order to fit off this Debt; and I brought him them when he was going into the Country: I brought him four Pounds Powder, and I brought him three Dozen and a Half of Cartridges.

Prisoner. Did I order you to bring them, or did you bring them of your own Head?

Brown. You bid me bring a Dozen and a Half, or two Dozen; and I brought these Dozen and a Half: The Reason was, that I might bring my own Debt.

(Mr. Rayburn sworn.)

Prisoner. Pray, will you give my Lord and the Jury an Account of the Piece of Arms I had of you, and the what Reason.

Rayburn. I went with him to see Mr. Pricker's in Fiddle Street, there was a Musket in his Camping-House; he said he would dispose of it. Mr. Lyster asked him his Price; he said he would have fifty Shillings for it. Mr. Lyster said, that was too much; says he, you shall have a Trial of it; and if your Seller carries her Cause against Mr. Rayburn, you shall give me fifty Shillings for it.

Prisoner. Did he put it on me, or did I do it?

Rayburn. You asked him what it was worth, and whether he would dispose of it?

Prisoner. Did not he say several Times that he wanted to dispose of it, and desired me to take it on these Terms?

Rayburn. Yes; He said on that Condition that your Sister get her Cause you should have it, and give him fifty Shillings for it.

(Mr. Samuel Brown sworn.)

Prisoner. Mr. Samuel, only give my Lord and the Jury an Account whether or no I was not intrusted with Things of great Value, and what Occasion I might have for a new Arms; whether you don't know of Money put out on Mortgage?

Brown. Yes, to the Value of thirty or forty thousand Pounds within these two Years.

Prisoner. Don't you think it reasonable as to these Arms, that I should have them in my House to guard my House?

Brown. I thought it very reasonable.

Mr. Hangerford. My Lord, we have done with examining Witnesses, so the Court of the Witnesses produced against the Prisoner, and leave that Matter to the Consideration of the Jury.

Mr. Kestley. Pray, Mr. Samuel, do you look upon that Paper they call a Scheme, with a French Motto upon it. Before you look upon that Paper, I ask you if you are acquainted with the Hand-writing of Mr. Lyster?

Brown. Yes, very well.

Mr. K. How long have you been acquainted with his Hand-writing?

Brown. Two Years and an Half.

Mr. K. Have you at any Time seen him write?

Brown. Yes, a thousand Times.

Mr. K. Do you believe that to be his Hand?

Brown. I do not believe it to be his Hand.

Prisoner. Is it like the Character I write?

Brown. Not at all: You write a better Character; this is a long one.

(Mr. Brown sworn.)

Mr. K. Have you been acquainted with the Hand-writing of Mr. Lyster?

Brown. I have been very well acquainted with the Hand-writing of Mr. Lyster.

Mr. K. You have seen him write?

Brown. Very often, a thousand and a thousand Times.

Mr. K. Look upon that Paper. See if you believe that to be his Hand-writing?

Brown. No, my Lord, I do not believe that to be his Hand-writing; I never saw him write a Hand like it in my Life. I don't think it to be his own Hand-writing at all; I never saw him write such a Hand as this.

Mr. At. Gen. Show him that Paper: (Hitherto was a Paper found among the Prisoner's Papers in the great Bundle.) Look on that Paper, and give my Lord and the Jury an Account if you know whose Hand-writing it is.

Brown. I believe it is my own Hand-writing.

Mr. At. Gen. By whose Direction did you write it?

Brown. By Mr. Lyster's Direction.

Mr. At. Gen. For what Purpose was it wrote?

Brown. I can't remember.

Mr. At. Gen. Did you write this for Mr. Lyster?

Brown. I believe I did; but I can't tell what particular Reason I write it for.

Mr. At. Gen. Now, my Lord, here is one of the Papers that were found in the Bundle, in which the Lists were found, proved to be written by Mr. Lyster's Clerk by his Direction.

Mr. Serj. Clegg. He is positive as to its not being his Master's Hand-writing; yet as to his own, he avers it.

Cl. of the Cr. It is a List of Names.

Mr. K. Before you read it, What did he say?

Mr. At. Gen. My Lord, he said it was his Hand.

Cl. of the Cr. It is Part of a List between Lyster and one Wayton.

Mr. At. Gen. This was found amongst his Papers that were sealed up.

It was taken in that Bundle where the Lists were.

Mr. K. We submit it to your Lordship and the Jury: We apprehend we have proved that Scheme not to belong to Mr. Lyster.

We have called two Witnesses that have known him many Years, and have seen him write a great many times, and that they verily believe it



not to be his Hand-writing. We don't know how it is possible to leave it on a better Form. Therefore, my Lord, we shall leave it to your Lordship's Discretion, and the Consideration of the Jury.

Mr. May. My Lord, all that I would now observe is, that this Gentleman is indicted for High-Treason. The main of the Charge against him is, that he was concerned in deluging to raise an Insurrection. How that appears to be proved, I have spoke to already; but this shall be allowed, that whatever Defamation and all Consequences might now have ensu'd, there hath been no blood shed, no Armes raised, or Insurrection attempted: And I think upon such Evidence, that comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reached: At least we humbly hope it shall not.

Prisoner. My Lord, as to *Lynd's*, it appears our going down into *Agincourt* was merely accidental: When we came to the *Green Man*, we did not stay there three Quarters of an Hour; and he says we went down into the Time. All this mighty Business, this publishing a Declaration, talking of an Insurrection, which is the Treason, and laid as an Over-Act in *Agincourt* all this was done before Dinner by his own owning. We were not three Quarters of an Hour from the Time we went in, till the Time we came out. We went on to my Lord North and Grey's, and when he was there, he is asked, if there was any Discourse there about any such Design? He says, There was nothing said of it there. Is it possible when such a Design was on foot, and I alone should go together with the *Green Man*, and thoroughly magnify the Affair, which when we came to my Lord North and Grey's nothing should be said of it?

When we came to *Phoebe*, he faith that he became acquainted with all of all, by means of some Goods that were seized in a House in *Queensberry*, that he never saw me till five Years after this in *Lancaster-Field*. *Phoebe* did not at first know me: We looking upon one another, then he conversed his Acquaintance with me, and told me of the former Service he had done too; and thereupon I gave him half a Crown, which he said was given him by me to Sir Men into the Pretender's Service. He confessed, as I proved by Major *Barnesell*, that I gave it him for former Services. As to the thirteen Shillings, he was asked, whether he did not come to borrow such a sum of Money of me? He said he did; it was in order to release Major *Barnesell* out of the *Morphy*. Being asked whether he was not acquainted with Sir *Daniel Garret*, and whether there was not some Difference about a Horse in *Spain* between them? He said there was, and that he came to advise with me, whether he could recover the Money of *Daniel Garret*? It is not natural that the Guinea talks of might be another Man's Money, that was told him by one *Jeffrey* was sent to him by me: He talks to him as to that Guinea, when he comes to be asked, whether it was not purely out of Kindness and Charity that I lend him that Guinea? He doth not deny it; and now would allegate that it was given him to lift Men for the Pretender. From the improbability of the Thing, from his own owning, no Person could believe him. I believe there are ninety-nine out of a hundred that cannot believe one Word that either *Lynd* or *Phoebe* have said.

Then the next Matter they talk of, they produce a Scheme: How hard and difficult is it to give any Evidence that it so should be read, and I humbly apprehend it did not rightly amount to legal Evidence. Mr. Duple, he said, he knew my Hand fourteen or fifteen Years ago, and that he hath received Letters from me about five Years ago, and hath compared that Scheme with those Letters, and therefore he believes it to be my Hand. When he comes to be asked, Whether he hath those Letters here with which he compared that Scheme? No, I have them not here: Yet do I say his Belief was that it was my Hand-writing, by comparing those Letters and this Scheme together. This amounts to nothing more, than it counts finally to be confirmed, then only a Similitude of Hand, and false Similitude of Hand, with Subornation, is not Proof in criminal Cases: And when it amounts to no more, it ought not to be proved.

Here is, say they, a Circumstance that what *Lynd* and *Phoebe* have said be true, because there was a Scheme for an Insurrection. In this very Scheme or Paper, as I took Notice of, not one Man is mentioned by Name in it; only Soldiers to be had here, the Tower to be forced, the Fleet and the Exchange to be seized, and the World to be turned upside down, but by whom? There is no Time mentioned, there is no Date to it. This Thing if it be such a Scheme, if it had been written by me, which I absolutely deny that it was written by me, it doth not appear that it was written several Years ago. When they come to ask those Gentlemen, the Under-Secretaries, if this be so remarkable that they by the whole Stress upon this Paper, whether I acknowledged it to be mine, they could not say I owned it to be mine. One of the Lords lays his Finger on a Paper, and faith, Don't you say this about Arms? Which I say to be so. How comes it that none of those Lords directly offered the Paper to me, and said me. Is this your Hand-writing? There was my Lord Chancellor, my Lord *Mansfield*, and several other Lords present, that very likely would have asked that Question; but either they did not think it material, or they had not the Paper there, or they did not think of this Consequence, or they knew I would deny it.

When we come to call Witnesses to this Woman, this vile, this infamous Woman, I could show you she hath been privy to Forgery. If you do not to take up your Lordship's Time, I could show that this is a false evidence between a Gentleman and her; I am very loth to name him, contrary on such a Paper as this to get Money of the Government.

Here have been five or six Witnesses, whose Credit stands unimpaired, and tell you their Word is not to be taken for a Guilt. Another says, he found our Party a Day on her Evidence. This Scheme must come from him: She says, she had two Bundles of Papers that were delivered by me to her husband; and she says this Scheme was amongst them, and she is the better for it, because she hath set her Mark upon it. One

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of the Maffingers doth not know whether she was in the Room or no. If this Woman is not to be believed, then all the other Evidence relating to this Paper falls to the Ground. It is a Mason in Reason as well as Law, to tear away the Foundation, and the Work must fall.

Gentlemen of the Jury, I would have you to take Notice of this Evidence, and not go away with a mistaken Notice, because here is a vast deal of Talk about the Pretender, going to Rome, taking of Soldiers, for the Pretender's Service, &c. Your Lordship will tell them all that is nothing, unless they believed an Over-Act to be done in *Agincourt*: That is the true State of the Case with humble Submission. Therefore I hope each Evidence in this Evidence of *Lynd* and *Phoebe* (but only so) to be taken from you, your Children made Staves, and all that is valuable to you, your Lives and Estates will be but very precarious, and if what he hath sworn doth not affect me, then all the other Words for nothing: That is the true State of the Case. I would not have the Jury think a Man is to be trusted out of his Lift by one Speech, a far-fetched Insinuation, and the like. You will consider the Character of this Man, that he is not to be believed. I'll leave it to you, and I hope God Almighty will direct you: I ask you no more than Justice, if a Man's Life is to be taken away by such scandalous Evidence as hath appeared against me, there is an End of all your Liberties, your Wives may be taken from you, your Children made Slaves, and all that is valuable to you, your Lives and Estates will be but very precarious.

Mr. Ser. Gen. May it please your Lordship, and you Gentlemen of the Jury, you have heard a very long Evidence, and it is my Part, as exactly and faithfully as I can, to sum up to you the Substance of it, and to reply to the Objections which have been made on the Behalf of the Prisoner; as well to show Objections as have been made by the Prisoner himself, and by his Counsel for him, as to those which arise from the Evidence that has come out of the Mouths of his Witnesses. And after I have done this, I doubt not but it will appear to your Satisfaction, that the Evidence which has been given for the King stands unimpaired, and is a strong Proof of High-Treason against the Prisoner at the Bar.

Gentlemen, the Treason with which the Prisoner stands charged is compelling and enraging the Death of the King. This high Crime consists in the Imagination of the Heart; but it must be proved and made out against the Offender by Acts which he hath done. The Over-Acts of this Treason alleged to be done by the Prisoner, are, in the first Place, consulting and conspiring to levy War against his Majesty: In the next place, publishing a reasonable Declaration, containing Exhortations, Encouragements, and Promises of Rewards, to stir up the King's Subjects to take Arms, and rise in Rebellion against his Majesty; consulting and conspiring to exalt the Pretender to the Crown of this Realm, and put him in Possession of the Government by armed Force, and to levy for that Purpose the actual military and retaining of Men to serve in this Rebellion; and, finally, a Conspiracy to seize and imprison the sacred Person of the King himself.

Gentlemen, the heinous Nature and destructive Tendency of these Facts were fully explained to you in the opening of the Cause. If they had not with Success, the Event could, undoubtedly, have been no less than the entire Subversion of our present happy Establishment; and, in consequence of that, the Loss of every Thing that is dear and valuable to us. For this Reason it was rightly admitted by one of the Counsel for the Prisoner, that the Crime, if proved, is incapable of Aggravation; and being so, although it is impossible to say too much concerning it, yet to say a great deal to you must be unnecessary, because it is equally impossible for the Hears of Englishmen and Protestants to suggest too loud to themselves so important, so moving an Occasion.

The Evidence which has been given consists of several Facts and different Kinds, every one of which confutes to support and corroborate the others, and taken together, they make up the fullest and most convincing Testimony that can be expected in any Case. In the first Place, living Witnesses were produced to you who were privy to the treacherous Acts and Consultations; in the next Place, several Papers have been read to you, some of them written with the Prisoner's own Hand, but all of them belonging to him, and last of all, you have the Confession of the Prisoner himself proved by two Witnesses.

The first Witness was Mr. *Stephen Lynd*, who gives you an Account in what manner he was first introduced to the Prisoner at the Bar. He tells you he came into *Agincourt* about April last, and had several Meetings with one Dr. *Morphy*, who was his old Acquaintance. At these Meetings they had a Discourse relating to the Pretender, and an Attempt to be made for a general Rising in his Favor; and Dr. *Morphy* having thus disclosed the Secret, told *Lynd* that if he would be of the Party, he would recommend him to a Gentleman who had a considerable Share in the Management of the Affair. *Lynd* took Time to deliberate upon it, and in two or three Days after told *Morphy* he was resolved to be of the Party.

Afterwards, as *Lynd* said, Dr. *Morphy* carries *Lynd* to the Prisoner's House, who proposed to them to go to the *Griffin-Tavern* in *St. James's*. Thither they went, and the Prisoner soon came to them, and you have heard in what Manner *Morphy* presented *Lynd* to the Prisoner, as being the Gentleman he had before spoke to him of, and what Proposals were made at that Meeting by the Prisoner to *Lynd*. That there was to be an Insurrection in the Kingdom in Favour of the Pretender, in which they should be supported by a great many of the Army and the Guards, as well as by several of the Nobility and Gentry; and that he wanted a fit Person to take one of the first Steps in it by leaving the Person of a fine General, or other great Man.

It may be proper here to take Notice of an Objection which was made to this, which is the very Beginning of our Evidence. That *Lynd* being an absolute Stranger to the Prisoner, it is very extraordinary that the Prisoner should make a Proposal of so dangerous a Nature to him at first Sight. But this is plainly accounted for by the Witnesses who

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tells you he was intimately acquainted with Dr. Ashurst, and Ashurst was very intimate with, and introduced him to the Prisoner as a Friend who might be consulted in. Apparently to this you observe, that the first thing the Prisoner accented Laver with, was, that he had had such strong Recommendations of Laver, that he was fully his friend in him.

This Witness goes on to give you an Account that at a Day or two after, in Pursuance of the Directions he had received from the Prisoner, he went to the same Tavern, and lent for the Prisoner. They had some further Conversation about a Rising, and the Inclination which appeared in the Nation for a Revolution. And now it was that the Prisoner informed Laver that there was a great Man at the Head of this Affair, who neither wanted Wit, Courage, or Refutation, and would at a proper time give Laver Orders to effect something considerable. At this Meeting the Prisoner particularly engaged Laver to seize the Earl of Cambridge. The Reason of this strange and unaccountable way, that it was in order to disengage the King's Party, and to make the Prisoner's. And, Gentlemen, the meaning of this is plain and obvious; for if an Insurrection was begun, which could be more likely to create a Confusion in the Army, and disengage the Soldiers to revolt, which appears to have been a main Part of this Design, than the seizing of this General?

There were several other Meetings both before and after the Prisoner's going into the Country, where the Witness tells you he had been present on several Days. At those Meetings they discoursed concerning the Conspiracy, and at one of them it is remarkable the Prisoner told Laver, that if they were not to be successful, they should want to Alliance from Abroad. And at last Laver tells you, that he long under Necessity, expressing great Uneasiness at the Delay of the Project, and, as I remember, talking of going beyond Sea, the Prisoner actually advanced to him a Sum of Money, no less than eight or ten Guineas at different Times, in order to engage him to this is one Proof of the Over-Act laid on the Indictment of being a Man.

As they had considered a time to dispose of the General, so it appears they did not neglect the Army, for Laver's acquisition was, that upon Discharge about that, he should encourage them they had been the Army; upon which the Prisoner answered, that he had great Encouragement from them, and several Sergeants and common Soldiers had given them Reason to believe they would join them. Laver being asked as to the Time when this Design was to be put in Execution, he told you there was no certain Time fixed, but the Prisoner informed him it was to be at the breaking up of the Camp; and at the same time gave a Reason for it, which is by no Means to be paid over, that they could not have a good Opportunity to do this till the 3d of June (that is, to induce them from their Duty and Allegiance) which they were assured, as in their Speeches, Publication in their Conferences, Mr. Laver afterwards told him would be necessary to take a proper time to view my Lord George's House. The Prisoner in going thither was that Laver had a Particular of an Estate which was to be sold to lay before his Lordship. He tells you that as Fast as I went to the House, I saw it, and the Friends of the Army, and at that time they also discoursed of seizing the Tower, and the Prisoner told the Witness that the Tower would be immediately surrendered to the Party on the Day the Plot should be put in Execution, for a certain Officer would take upon him to mount the Guard there that Day, who would facilitate the Delivery of it to them. And the People of the Army were at the same time to have Arms put into their Hands.

This is a very remarkable Passage, and falls in with the Scheme which was afterwards produced to you in the Prisoner's Hand-Writing.

The next Meeting where any thing but a word repeating to you, was at the Queen's Head-Tavern in Great Street in Fleet, and when the Witness came to the Prisoner there, he found one Laver in Company with him, and that he was, who was by his Clouts to be a Sergeant of the Guards. He told him that the Prisoner was to be a Sergeant of the Guards, and the Prisoner was to be a Sergeant of the Guards, and the Prisoner was to be a Sergeant of the Guards.

At this Meeting Laver tells you they talked over the Business, and drank good wishes to the Enterprise. When they parted, he complained to the Prisoner of the long Delay. Upon which Mr. Laver told him there was a Nobleman at the Head of the Design, who had full Power and Authority from the Pretender (whom he called King), who would not sit Oppositely to put it in Execution. He did not name this Nobleman, but told Laver that he should be presented to him in due time, and also received Orders from him to seize my Lord George.

Gentlemen, it will be very material for you to fix this Circumstance in your Memory, and to connect it with the Evidence which comes afterwards, and what was done in consequence of this Meeting.

For after Laver had thus declared that there was a Nobleman at the Head of the Conspiracy, and Laver should be presented to him in due Time, then it fell out that upon the twenty-fourth of August, the Day the Bishop of Rotherham was committed to the Tower, which appears by the Evidence to be the Time of their next Meeting, Mr. Laver proposed to Laver to take out to take the Act, which was agreed upon for the 11th of September.

In that Journey the Prisoner persuaded Laver to carry Arms, because, as he then declared, he had then about his mind he was not left for all the World. Upon the Road Laver told Laver they were to go to my Lord North and Grey, and when they were got pretty near the Green-Max at London-Road in Essex, it was thought to be too late to go on so fine at Lord North and Grey, and therefore the Prisoner proposed to stop at the Green-Max to make the Over-Act of High-Treason committed in Essex, which we were so much called upon to make out to do. During their stay here, the Witness gives you an Account that they discussed of the whole Project of the Insurrection, the Means of effecting it, the Unlikely

ness that was in the Nation, and in General all the several matters that he considered of before, and after they had done that he tells you Laver the Prisoner proposed to him that desirable and to carry it out having the Lord Prisoner of the King, which he to secure himself, a strong Guard to take Care of them at other times to pass the King's son.

He tells you further, that Mr. Laver paid out of his Pocket a small Paper, and delivered it to the Witness in post folded down, and that Part of it which was left open. That that Paper contained a Declaration, with a Recital, that my Lord George was then actually in Calcutty. That there were in it invitations to the People to Rise Arms and resist to their Party's Encouragements to the Subjects to take with an Offer of Forty Guineas to every Horseman and Soldier, a Guinea to every Cavalier, and One Guinea to every Common Soldier, to be paid immediately on their joining the Party; and a Promise of Rewards. Laver acquiesces you, that the Prisoner talked of this Declaration being of his own Compelling, and that from the Discretion which was paid between them, and the Appearance of the Paper, he appeared to be of the Prisoner's Hand-Writing.

My Lord, after this Declaration had been thus produced, the Prisoner took it back again, put it into his Pocket, and kept it; and immediately the Paper itself being in his Calcutty, we were properly delivered to prove the Contents of it by Paula Eversmore, and I suggested it was no further Proof of this Over-Act which was done in Essex, than it was in fully sufficient to maintain the Indictment to be against and properly found in this Country.

From the Green-Max they went on to Essex, to my Lord North and Grey, with whom it is admitted the Witness was one of all acquaintance, and consequently could not of himself have any particular Reason for going thither, but it appears to have been upon the Motion of the Prisoner. When they were at the Earl North and Grey's House, Laver was with the Prisoner introduced into his Lordship's, and the latter looked at one of his Men's Memory, and makes it impossible not to recollect it with the Prisoner, or had told Laver at their last Meeting, in time near to the 11th of September, that there was a great Man at the Head of this Design, to whom he should be presented in due time.

Gentlemen, after this Laver went a second time to my Lord North and Grey's at Essex, and there he found the Prisoner at the Earl's, and indeed he does not own to you that any thing but Laver between them relating to the Conspiracy in the Presence of my Lord North, but at that Place Laver in Conversation with Mr. Laver, expressed an Uneasiness that the Affairs were del. 11, but Laver told him he was, for it might be done, sooner than he expected.

Gentlemen, this is the Substance of the Evidence of what was said in Essex. But the Witness tells you he had afterwards several Conversations with Mr. Laver, and when he spoke of his Concernment at the Delay of putting the Design in Execution, Laver told him he was so bent upon the Success of it, that rather than it should fail, he would be a second My Lord. This was expressed as a ridiculous Expression by one of the Counsel for the Prisoner. But we have all heard what Continuation was made by that prodigious Fellow in the Kingdom of Naples, and it is plain, that was the Example the Prisoner acted by in this Expedition.

Mr. Laver was afterwards by the Counsel for the Prisoner, with as much liberty as they thought fit to say; but I did not observe that his Evidence was at all weakened, I think I may say, it was rather confirmed by it, since it was upon their own Questions he gave his Reason how Laver came to do so openly and unguardedly with him at first, he, and those Reason were strong, for it is not improbable, if Ashurst and Laver were engaged in a Treasonable Design, that one of them should have confidence in a third Person to do strong a Recommendation from the other.

The next Witness is Matthew Phelton, and I apprehend, notwithstanding every Thing that hath been said against his Testimony, that it is rather strengthened, as to the Facts sworn by him, than weakened by the Evidence for the Prisoner. He tells you, his first Acquaintance with Mr. Laver was about five Years since, and had his Rise upon this Declaration: The Goods in the House where the Prisoner then lodg'd, being taken in Execution, (whether his own Goods or not, is not at all material) one Major Barnard, who has been examined for the Prisoner, was employed to procure Persons to refuse their Goods, Barnard applied to this Witness, who got two Greenads, that were left in at a private Door by Mr. Laver's Clerk. They did their Work, drove out the Officers, and released the Goods; and for this Service Mr. Laver rewarded them with a Crown and three Shillings. Since that, it appears he has been employed on other Messages between Major Barnard and the Prisoner, and in what manner Phelton is supported in these Circumstances, and by Consequences in the rest of his Testimony, by Major Barnard himself, who has been produced to do it, and I shall observe when I come to consider the Evidence for the Prisoner.

But the Witness having given you this Account of the Introduction to the Green-Max, tells you, that in 7th July, John Pender came to him from the Prisoner, requested privately what Acquaintance he had amongst the Builders, and what he knew to meet the Prisoner at the Indian Coffee-house in Great-Street; but he did not meet him there, not having Money nor Inclination to go to a Coffee-house. He gives you an Account, that on the Sunday following, returning from St. Andrew's Church, as he was going to St. Andrew's Church, Mr. Laver went with Phelton had bargained Laver's Party, but Laver was unwilling, and told him if he knew him, to which Phelton answering that he did not, Mr. Laver required of John Pender to lead him to the Witness, to where he had been to the Indian Coffee-house, a few Days before, and having that he could not find him there, he was obliged to go to a private Place. There they had a long Conversation, in which Mr. Laver said, and he







he made their Prisoner: Horrid Resolution! Colour'd indeed with the Name of Securing his Royal Person from the Infuets of the Mob; but how thin a Pretence is this, I need not spend Time to explain to you, since the Writer of the Scheme himself has called it but a Pretence.

The Scheme goes on, and the Conspirators being sensible how much our future Hopes, as well as our present Happines depend on the Prosperous Succession in his Majesty's Family, the next Step to be taken, is to get his Royal Highness the Prince into their Power.——A Prince at Richmond, defended under a Cant Name, but the Meaning of it is plain. When all this appears, how can the Council for the Prisoner object, that there is not sufficient Foundation to accuse their Client directly of compassing the Death of the King? I could thus have ended in any thing else! Or can any one deny, that since of those precious Lives, I have now mentioned, could have been preferred in the Hands of such Miscreants?

Gentlemen, having observed thus much, in short, upon the Nature of the Scheme, it will be proper to take Notice to you, that as this Paper, thus fully proved, is of itself a strong Evidence, so it greatly corroborates and supports the Testimony of the two Witnesses, as to every one of the Over-Acts charged in the Indictment, and tallies with it throughout.

This is true as to the general Design, but appears most remarkably in some of the particular Facts. The Design laid down in the Scheme for forcing the Prisoner to enable the Game with what Lynch told you the Prisoner communicated to him whilst they were viewing my Lord Godolphin's House: *That the Officer who should be upon Duty there that Day might be their Friend, and favour the Design.* In like Manner, the Circumstance of eight Sergeants being to have in Residence twenty-five Men a-piece, falls in with what Plaintiff, the Sergeant swore, that he was to procure that Number of old Soldiers to engage in the Enterprise.

But there is one Observation arising from a Circumstance of Time, which is extremely strong in Confirmation of the Testimony of the Witnesses, and shews manifestly, that the Accusers they give, much more only from their Knowledge of the Truth of the Facts, and could not possibly be fram'd, and modell'd to answer these Papers; it is this, that Mr. Layer, who was taken up on the Information of Lynch and Plaintiff, was actually in the Custody of a Messenger, and made his Escape on the 29th Day of September last; but these Papers, which thus fall in with, and support the Facts they swore, were not seized, as the two Messengers acquaint you, till the 10th of that Month; which is near ten Days after.

Gentlemen, one would have thought there had been no Occasion to go any further.

My Lord, I desire that the Prisoner may not talk to the Jury, whilst I am offering upon the Evidence.

L. C. J. Sir, you must not do so.

Prisoner. My Lord, I did not speak to the Jury.

Mr. Haggerford offers to speak.

L. C. J. I tell you, Mr. Haggerford, it is not right; Mr. Layer hath made his Observations to the Jury, and made his Noes, and sentences I have seen his Lips move.

Prisoner. You can't tell what I said!

Mr. Ser. Geo. I saw you turn about to the Jury, and saw your Lips move at the same Time.

My Lord, I desire he may stand up, and look towards the Court, which is his proper Posture.

Gentlemen, I was saying, that after this Scheme had been produced, one would have thought the King's Council might safely have rested in here. Can any body doubt of this Treason, and of the Prisoner's Part in it, when he himself hath thought fit to record the Conspiracy with his own Hand? However, we did not leave it here: But in order to give you entire Satisfaction how deeply this gentleman was engaged, with a large sum he had taken upon him, and how dangerous and extensive this Conspiracy was, we read several other Papers. They consist of Lists of the Names of several Persons, many of them Officers of the Guards, and of the Army, some of them general Lists, others particular: For what Purpose these must have been made up or procured, by a Person engaged in such a Design, is extremely plain.

My Lord, it hath been said with great Justice, That this is not to be understood, as to bring any Imputation on the Gentlemen named in these Lists. I dare say, that by far the greater Number, if not all of them, are Persons of the utmost Fidelity to his Majesty, and Zeal for his Service. But Men engaged in such Designs, who are plotting to overturn a Government, must weigh and calculate the Strength of that Government, as well as their own. They must know who it is to be relied upon on one Side as well as the other, and consider who are fit to be applied to, and who not; therefore they must take an Account of Persons concerning whom they have no Hopes, as well as of those of whom they have Hopes. Thus it was in my Lord Pringle's Case, he had got Lists of Ships, and of the King's Officers and Troops: The meaning of it was well understood upon his Trial; the Court understood it, and the Jury understood it, that he had procured them, in order to the better Information of himself and his Accomplices in the Conduct of that Plot.

Gentlemen, in the next Place, several Letters were read to you, which were also found among the Papers deposited by the Prisoner with Mrs. Moyle. You will remember on this Occasion, what Mrs. Moyle swore, that the Prisoner hath some time gone by the Name of Fawcett, and gave Directions to her, that if any Letters came directed to Mr. Fawcett, he should take them in, and deliver them to him. She tells you, a Letter did come directed to Mr. Fawcett; that she delivered it to the Prisoner, who opened it, read it, and kept it as a Letter for him; which was an express owning of that Name, and several of the Letters now produced are directed by the Name of Fawcett.

There was found, together with the Letters, a Cypher, that is, a List of supposed Names for Persons and Things, which has been in Part read, and in this Cypher the same Expressions made use of in the Letters are contained, and the Persons and Things signified by them discovered in plain Words. So William Ellis (a follower of the Prisoner, with whom it appears the Prisoner had carried a Correspondence) is there denoted by the Name of *Esquire*, and the first Letter that was read, is furnished with that Name and directed to *James Fawcett, Esq.* In that Letter Mr. William Ellis tells him he is sensible of his Opinion as to the Method of carrying on the Conspiracy, and the procuring of good Workmen is the first Step to be made. *Mansfield* wanted some Expression, but it is fully explained up by the Word *Workmen*, which follows. For both upon the Cypher, and *Workmen* stands for *Soldiers*; so that the *Mansfield* may be taken as it was fit for *Soldiers* to work in. He goes on and advises him particularly to get some of the eldest of Mr. Barbara Smith's. *Barbara* in the Cypher means the *Army*; so the Advice amounts to this, That in order to raise a Rebellion, he should induce some of the ablest Officers of the King's Army. A Counsel, which is now made very plain, as the Prisoner has acknowledged partially to follow. To encourage him in this, he tells him, That it will be very agreeable to all concerned——particularly to Mr. Adams. Now, according to the Prisoner's own Explanation in this Cypher, *Adams* is one of the signed Names for the Prisoner.

The next Letter is dated the 11th of July last, subscribed N. G. and acknowledges the Receipt of a Letter dated the 8th of May, with another Letter inclosed, which the Witness says, *Was privately delivered to Mr. John*, who told it extremely audibly: Look into the Cypher, and it appears that Mr. *St. John* is one of the supposed Names for the Prisoner, so that this Letter shews, that the Person to whom it was written, corresponded immediately with the Prisoner himself. But it seems Mr. *St. John* did not well understand what related to Mr. Burford, which the Letter-Writer says may be *just taken up by an Officer*. What this was which wanted Explanation, I don't know so much as you may know, that in the Prisoner's Cypher, *Burford* stands for the Earl of Orrey.

There is another Letter dated the 29th of May, in which the Witness tells Mr. Layer, that their Friend had his Letter of the 22d of March, and told very freely the Care he had taken of his little Concern. Who it must be that Friend, whose Concerns were the Prisoner's Care, does not certainly appear; but it is very natural to think, it is the same Person before called *Adams* and *St. John*. However, it seems their Friend was again at a Loss about certain Names——*Burford*,——*Stout*,——*Digby*,——the little *Soldier*, and *Stewart*, which were not in his Record.

The Word *Record* in Mr. Layer's Cypher, is the Count-Term for a Cypher; and in that likewise are to be found the other Words, which his Friend did not then understand; particularly *Stewart*, which is set forth for the Lord North and Grey. But if that did not appear by the Cypher, yet the Description which follows, would be enough to convince every Man in his private Judgment who was meant by it——*He is of the North, a Grey hair'd ancient Man, Cant Expressions plainly, which are in both the Titles of that Noble Lord.* The Letter-Writer adds, that their Friend (the same whose Concerns were taken Care of) very well understood this Person, and had a very particular *History and Fable* for him, and that he is (as their Phrase) a very good *Trooper*, and a very *valiant* Man.

Gentlemen, Some of the Papers were read to you of a more extraordinary Nature than even these Letters; I mean the Noos signed *James* to the Prisoner's own Hand. These are not only on Evidence of the Plot, but a Part of the Means by which it was to be effected, for they appear to be Receipts framed with Blanks, to be filled up with several Money as Occasion offered, with a Promise of Repayment with Interest. These were forms of the Ways and Means for raising Supplies out of the Pockets of such People as should be found weak and silly, as well as wicked enough, to advance Money on such a Shadow of a Security, as to signatur a Purpose. But they are, as who proves the Satisfaction of the Prisoner's Hand? I answer, It is certain that is not material; but if it were, we have it sufficiently from the Prisoner himself. The Count he hath thought fit to give of them, you have heard from Mr. Adams; that he had written to his Correspondent Sir William Ellis, that Sir William could send him over some blank Receipts under the King's own Hand (so he called the Prisoner) he believed they might be useful for the carrying on his Cause. That his Intention was to provide his Friends, and to have raised Money on these Receipts. Hence the Prisoner received them as being signed with the Prisoner's own Hand; and therefore the Use intended to be made of them; and appears he had the Confidence as judiciously blind in this Proceed, by the like Method having been taken by King Charles the Second, just in his Reformation.

My Lord, this is the Substance of our Proof as to the Papers and Observations which have occurred to me upon them, and I will profess to say, with great Submission to your Lordship's better Judgment and Observation, that upon this Evidence, taken together with the Testimony of the two Witnesses, we might safely have trusted our Cause to your Lordship's Discretion, and the Conscience of the Jury. But we went further, not because we wanted it to convince the Prisoner, for we had all done sufficient for that Purpose, but in order to give abundant Satisfaction, not only to the Gentlemen of the Jury, but to the World, of the Reality of this Conspiracy in general, as well as of *Man's* Part in it; that they may see and be convinced of the just Grounds there were for this Prosecution, and for the Treatment the Prisoner must with. For this Reason it was, we called Mr. Stewart and Mr. Layer to give an Account of his Confession, upon his Examination the Lords of the Committee of Council; and I apprehend, we were fully and agreeably to the Rules of Law, let into that Evidence, here had the Judgment of the Court upon that Point, therefore I beseech your Lordship with any Annotators for it, but only upon the best Authority.



Gentlemen, the Relation Mr. Doleysse and Mr. Stewson gave, was, that the Prisoner declared to the Lords of the Council that he had been in France in the Year 1721, and said there some Time, and had several Conversations with the Pretender in Person: that in one of those Conversations he asked for some Token or Credential, in order to give him a Certificate with the Party when he returned to England; that it was not at first granted, but afterwards he put his Request into this shape, that the Prisoner's Wife (the Queen he called her) would be pleased to send him some Token or Credential. Some Time was taken to consider of his Request, and then Word was brought by Colonel Hay to the Prisoner, that he would send Word-mother to the Child; and it was agreed, that the Letters of the Queen should represent her. Afterwards the Prisoner came in to be the God-father, but Laver was to procure some Token to be his Proxy.

What was then agreed upon was followed by the Fall. When the Prisoner returned Home, and the Child was to be christened, he applied to Lord Egmont to represent the Pretender, and to the late Duchess of Grafton, to represent the Princess of Wales. The latter complied, but no Lord would defend the Service; and thereupon the Prisoner made Application to my Lord North and Grey, who was pleased to accept of it. The Child was christened at Chiswick, and my Lord North and Grey stood as Proxy for the Pretender, and the late Duchess of Grafton for the Princess of Wales; and the Prisoner said; they both were pious that they professed those Persons.

The Prisoner's Confession likewise verifies every material Circumstance of the Evidence, as to what passed in the County of Essex. That he was at the Green Man with one Lenz, and there showed him the Heads of a Declaration which he had drawn; that they went from thence to my Lord North and Grey; and there the Prisoner gave to the Witnesses his Letter in a very secret Manner, and Purkin fit to be employed in doing so. Lord G. signed; and afterwards he said, as a Person fit to be employed in so important a Matter, that the Prisoner and Lenz lay at my Lord North's House that Night, dined with him at his own Table the next Day, and that the Heads of the Declaration, his Wife, and Child, were drawn by them after Dinner, and the same Heads were drawn, and (if I understand it right) began by that noble Lord himself.

There was a further Circumstance sworn by Mr. Stewson, in which he confirmed by Colonel Haaks, that at the Time Mr. Laver was appointed, a considerable Quantity of Arms, and about fifty Artillerymen, made up with Ball, and fitted for the Use of Soldiers, were found in his Office; and the Prisoner being asked, upon his Examination, what he did with them? he said, They were for his Use, in case there should happen a Disturbance in the Nation.

The Prisoner entered into an Examination of the Gunsmith, how he got by their Arms, but that is not at all material: in his whole they were found, and he has confessed they were intended for his Use in Case of a Disturbance in the Nation. What Disturbance was there likely to happen, but from himself and his Associates?

Gentlemen, the Prisoner's Escape out of the Melfinger's Chantry is another Circumstance. In order to fly from London, he was taken out of a Window two Stories high, and had the Fortune to meet with a Sculler, which carried him safely the Water into Barbadoes. When Mr. Womels first endeavoured to stop him, it appears he was in the utmost Concern; begged of him for God's Sake to let him go, promising it was in his Power; and then he pulled out of his Pocket a great many Guineas, and bid the Witness take what he pleased, for he would not let him go; but the Melfinger pursued him pretty close, and he was taken.

Gentlemen, this is a very material Piece of Evidence to shew the Guilt of the Prisoner. The Law of England supposeth Guilt from Flight, and though it was said, that any Man in Mr. Lenz's Condition is liable to a Window two Stories high, and had the Fortune to meet with a Sculler, that any Man in his Condition, as to the Consciousness of his own Guilt, would have done it; but an innocent Person would never brought that Imputation upon himself, by endeavouring to escape.

In the Substance of the whole Evidence which has been given for King against the Prisoner at the Bar, as well as I can recollect it, Gentlemen, I persuade myself, when you have considered it seriously, you will be satisfied that it makes good every Part of the Indictment. But be that never so strong, the Prisoner ought to be heard against it, and have a full Opportunity of making his Defence. For if he had in Defence, either in Point of Law, or in take off the Force of Evidence, God forbid that he should suffer by it.

The Prisoner entered upon his Defence, and his Counsel were pleased out with making some Observations upon the Case, as we had it in Law, they first make an Objection in Point of Law, that the on, for which the Prisoner is indicted, is compassing the Death of us, and one of the Overt-Acts laid is only a Consultation to levy us, which they treat as not an Overt-Act of that Species of Treason, unless any Treason at all, because the Words of the Statute, 25 III. imported a War actually levied; and for the same of those Words, which nobody ever doubted of, were ancient French Writers quoted.

Lord, I apprehend this Objection, if it be one, is rather to the fact than to the Evidence, of which they know they may take Advantage in Point of Judgment. But with great Submission to your Lordship, there is no Weight in either Way. One cannot help being a little surprized to hear it mentioned, after that Point has established by so many Resolutions, which at the same Time they say they are aware of; and as the very last Case of High-Treason, was in this Court, I mean that of *Terre, Darnley, and Gou*, it was determined by the unanimous Opinion of all the Judges, that a Motion to levy War, in order to destroy or depose the King, is an Act of High-Treason, in compassing his Death. This was the Act of Darnley before the Revolution, and it has been adhered to ever since, and though the Act of Reversal of my Lord Russell's Attainder has mentioned it, yet if that were looked into, I dare say, no Declaration be found in it, contrary to this Determination. But they go farther,

and object, that here it is no Overt-Act at all, provided to be done in the County of Essex; and if so, then whatever the Prisoner may be of Facts done in *Essex*, that will go for nothing, and the Prisoner must be acquitted upon this Indictment. And, my Lord, so far I agree with them, that unless we have proved one Overt-Act at least to be done in *Essex*, we cannot maintain this Indictment.

In Support of this Objection they would have it, that the only Treason in *Essex* is what passed at the Green Man; and the whole of that is reduced simply to the publishing the Declaration; and that, say they, is not legally proved, and if well proved, it is no Overt-Act of Treason. As to the Proof, they object that the Paper itself is not produced, and Parole Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have given this an Answer already, by observing that the Prisoner took back the Paper, and kept it; so that the Writing itself being proved to be in the Custody of the Party, we were entitled within the ordinary Rule, to give Parole Evidence of the Contents. But, my Lord, this Declaration was a Part of the treasonable Consultation then laid, and for I am, it would be the first Invention to secure certain testimony to Persons that ever was thought of, if, instead of securing, the Consultation shall be carried on by Paper handed from one to another, and nobody can be convicted, because the Paper is not to be found. As to that Part of their Objection, that it is no Overt-Act or Treason, one of the Gentlemen thought fit to treat it in a ludicrous Manner. 'Twas only reaching a Piece of Paper, saying they had sent a Ballad. That Gentlemen will pardon me, if I say, that Expression did not become this Occasion. An Attestation of High-Treason, which highly concerns the King and his Government, is an Act of a serious Nature, and if Womels said, he cannot think it a Matter to be treated with, that Mr. Kestley was pleased to say, that this could be no Overt-Act of Treason, because it was but publishing a Label. But fairly, that is very extraordinary. Publishing of a Paper may amount to one Crime or another, according to the Substance of what it says, and can be a Question at this Time of Day, whether the publishing a Declaration or a Book containing Arguments, or offering Rewards directly to stir up our King's Subjects to rise in Rebellion against him, be High-Treason? The treasonable Intent in this Case is what is disputed, and 'tis uncertain that the Publication is an Act; what is there then wanting to make it Treason? I say, my Lord, this has already been adjudged, and therefore I won't argue it.

My Lord, I have said thus much about the Declaration for the sake of following the Gentlemen, who are Counsel for the Prisoner, in their Arguments, but after all, their Foundation, which is a Supposition that there are no other Overt-Acts proved in *Essex*, before this of the Declaration, easily falls than; for your Lordship will inform the Jury, that Lenz depose that whilst they laid at the Green Man they did more than send a single Paper, they consulted about the Project of an Insurrection, and the Prisoner there actually proposed to him (Lenz) what was contained in the Paper, the Design of seizing the King's Person, which are two other Overt-Acts laid in the second Part of the Indictment.

Upon this, another Objection was raised by Mr. Kestley, which, if it holds, will go to the whole; and that is, that we have not one Witness, Lenz alone, to the Facts in *Essex*; and this Indictment must fall, unless there are two Witnesses to some or other of the Overt-Acts in the County where the Indictment is laid.

But, my Lord, that is not now to be disputed. The Law is clearly settled, that on an Indictment for High-Treason, in compassing the King's Death, if several Overt-Acts are laid, and most of those Overt-Acts proved by one Witness to be done in the County where the Party is indicted, and some of them are proved by another Witness to have been committed in a different County, the Evidence is sufficient to maintain the Indictment; they are two Witnesses of the same Species of Treason within the Meaning of the Law. So it was expressly resolved by all the Judges of the King's Bench, in the Case of *Mr. Henry Fenn*, which is reported in *Essex* 15, and that has been since followed by a Current of Authorities; the Case of the Five Jesuits, the Opinion of the Judges delivered to the Lords upon the Trial of my Lord Stafford, 23 Car. II. and other Cases.

My Lord, as this is established by Authorities, in the Reason and Necessity of the thing, because otherwise the whole Consultation might easily be carried on in such a Manner, that nobody could be convicted of them. It would be but to say the same upon the Confines of several Counties, and take Care not to confide with any two Persons in the same County; then there could not be two Witnesses, and all would be false.

I have done with their Objections in Point of Law, and shall now endeavour to give some Answer to their Observations upon the Facts. And, Gentlemen, I think the whole of those Observations may be reduced to one Head, which is, that it is highly improbable, that what the Witnesses have sworn they have offered, I beg leave to say in general, that though in a doubtful Case, where there is any Balancing in the Proof, the Improbability of the Thing is a Consideration of great Weight, yet where there is plain and positive Evidence on one Side, not weakened by any Counter-Evidence on the other Side, the Objection of Improbability can be of little Force.

But to consider this Improbability. They say, 'tis very strange, that Mr. Lenz should be engaged in so dangerous an Undertaking with such Persons as have been supposed to be his Associates. To this, I say, 'tis very strange, that Men should venture to trait one another with such a treacherous Security; but certain it is they often do, and as to the Witnesses in the Case, they are proved by the Prisoner's own Evidence, to be Persons with whom he thought fit to hold a Correspondence. How then great Confidence was at last craved between them, has been accounted for by the Witnesses themselves, in a very natural and probable Way, of which I have already taken Notice.







It has been said, indeed, that he is but an inconsiderable Man, of no Rank or Fortune fit to sustain such an Undertaking. That Observation may be true; but since 'tis plain he did undertake it, that, joined with the other Circumstances proved in this Cause, serves only to demonstrate, that he was fit for work, and supported by Lewis's or greater Abilities, as such an Entrepreneur. And, Gentlemen, this is the most affecting Consideration of all.—But I would not, even in this Cause of your King and of your Country, say any thing to excite your Passions; I choose only to appeal to your Judgments, and to shew I submit the strength and Consistency of the Evidence you have heard.

My Lords, I beg Pardon for having taken up so much of your Time; I have said no thing to add, and out in, barely to beg of your Lordships for the sake of the King, for the sake of myself, and for the sake of the Prisoner at the Bar, that if I, through Mistake or Inadvertency, have suggested or misinterpreted any thing, or had a greater Weight upon any of his Evidence, than it will properly bear, your Lordship will be so good, to take Notice of it, and let it right, that this whole Cause may be left to the Jury in its true and just Light.

Mr. Serj. Clegg. It is so late, that it will be unexcusable in me to trouble your Lordships with any thing by Way of Reply, especially since Mr. Attorney-General hath done it fully. We shall only beg leave to call a Witness to the Credit of the King's Witnesses.

Mr. At. I shall not take up much of your Lordship's Time, especially for your Lordship and the Court have been entertained so well and so long by Mr. Attorney-General, at least two Hours, as I have observed by my Watch, but 'twas impossible for me to thank him without, though so late at Night, and especially since his Conclusion is exactly agreeable to a Conclusion of a late celebrated Solicitor-General\* on a like Occasion.

Mr. At. Go. We must beg leave to call five Witnesses we have, who will support the Credit of Mr. Lynch and Matthew Plasket.

(Mr. Ferras sworn.)

Mr. Serj. Clegg. Do you know Mr. Lynch?

Ferras. Yes.

Mr. Serj. Clegg. What Account do you give of him?

Ferras. I keep a Tavern at the Swan and Hammer in Fench Lane; this Gentleman hath frequented my House these four Months every Day, till was in Custody, he hath been a very good Customer and paid me honestly.

Mr. Serj. Clegg. Do you know the Prisoner at the Bar? Have you seen Mr. Lynch and him in Company together at your House?

Ferras. Yes; I have seen them twice in Company together at my Inn.

Mr. At. How long hath he been your Customer?

Ferras. From the beginning about four Months.

Mr. At. About four Months? Did he spend his Money plentifully or frugally?

Ferras. Yes, (most Part) of it I have had since he hath been in Custody.

Mr. At. How long was he in your Debt before he was in Custody?

Ferras. Ten or eleven Shillings.

Mr. At. How long had he been in Custody before he paid you?

Ferras. Not long.

Mr. At. He had the First Fringe of his being in Custody; he had ten Months, and so he paid you your reckoning.

Mr. Serj. Clegg. We take in, that Mr. Ferras proves, that Lynch and Lynch were conversant together.

(Capt. Maltree sworn.)

Mr. Serj. Clegg. Do you know Stephen Lynch?

Maltree. Yes.

Mr. Serj. Clegg. How long have you known him?

Maltree. About Nine Years. I knew him first, when he was a Merchant in the Country. I traded with him several Times; several Times I was confined to him, and I have seen him at Home.

Mr. Serj. Clegg. What Account can you give of his Behaviour?

Maltree. He always behaved himself very well, I think.

Mr. At. How long is it since your last Acquaintance?

Maltree. About four Months.

Mr. At. What Distance of Time did these six be between your seeing him?

Maltree. Two or three Years; every Time I came Home.

Mr. At. Doth he owe you any Money?

Maltree. No.

Mr. Serj. Clegg. Would you trust him with Money?

Maltree. He never sh'd me.

Mr. At. Your Witness we may ask as to Particulars, Did you know him there at that Time?

Maltree. No.

Mr. At. Did you know any thing of his Behaviour?

Maltree. I never knew an ill Character of him in any Life.

(Capt. Arnold sworn.)

Mr. Serj. Clegg. Do you know Stephen Lynch?

Arnold. Yes.

Mr. Serj. Clegg. How long have you known him?

Arnold. 'Tis fourteen Years ago.

Mr. Serj. Clegg. You have been acquainted with him since. What do you give of his Character? Do you think he would further

Mr. Serj. Clegg. Would you have trusted him with five hundred Pounds?

Mr. At. Would you trust him with five Shillings?

Arnold. Five Shillings is a small Sum.

(Col. Mowsey sworn.)

Mr. Serj. Clegg. Do you know Matthew Plasket?

Col. Mowsey. Yes.

Mr. Serj. Clegg. How long have you known him?

Col. Mowsey. Upwards of ten Years.

Mr. Serj. Clegg. What Credit hath he? Do you take him to be an honest Man?

Col. Mowsey. He behaved himself well, and like an honest Man.

Mr. Serj. Clegg. Do you think he would further himself?

Col. Mowsey. No; I believe not.

Mr. At. Have you and I had any Discourse about this very Plasket?

And did not you tell me he was a Scout?

Col. Mowsey. No; I did not.

Mr. At. Did not you give him a bad Character to Mr. Leger?

Col. Mowsey. No, I did not.

Prisoner. Do you mean then, that he behaved himself very well, as a Soldier? What is that as to his Character in general?

Col. Mowsey. I know no ill Character of him while he was with me.

Mr. At. Did you never hear any thing in relation to Sir David Corbett, that he made a wrong Demand upon him?

Col. Mowsey. If he made any such Demand, will he therefore be perjured?

Mr. At. What have you heard about that Affair between Mr. Plasket and Sir David Corbett?

Col. Mowsey. I have heard Mr. Leger say—

Mr. At. Did you never hear any Body else speak of him? I ask you about making this Demand upon Sir David Corbett, what you know of it?

Col. Mowsey. I never heard any thing like it.

Mr. At. My Lord, we apprehend we may cross-examine, as to Particulars, a Person whom the other Side produces as a Witness to Character.

Prisoner. Did not you afterwards, in discourse with Mr. White, mention it again with relation to this Sir David Corbett?

Col. Mowsey. I deny it.

Prisoner. Did you desire me not to examine you?

Col. Mowsey. No, I told you I had nothing to say in relation to Plasket's Character.

Mr. At. Let him alone, I would not stir him any more Questions.

Col. Mowsey. Why let him alone?

Mr. At. I would not have him examine you any farther.

Col. Mowsey. You are very civil.

Mr. At. So I am, to give you no farther Trouble.

(Major Hamel sworn.)

Mr. Serj. Clegg. Do you know Matthew Plasket?

Major Hamel. I have known him these seventeen Years.

Mr. Serj. Clegg. What Character hath he?

Major Hamel. He was then a Drummer in the Regiment, and always did his Duty well; I never heard him complained of; he always had a good Character; he went from Ireland to Spain.

Mr. At. You speak to his military Conduct?

Major Hamel. I know of no other.

Mr. Serj. Clegg. You say he always had a good Character?

Major Hamel. Yes, he always had.

(Captain Crayth sworn.)

Mr. Serj. Clegg. Do you know Sergeant Plasket?

Crayth. Yes.

Mr. Serj. Clegg. How long have you known him?

Crayth. Three Years.

Mr. Serj. Clegg. What Character had he for that Time?

Crayth. Whilst I knew him, he bore a good Character.

Mr. Serj. Clegg. Did you hear any ill of him?

Crayth. Not during the Time that I knew him.

Mr. At. When was the Regiment at that Time?

Crayth. It was in Town about half a Year ago.

Mr. At. Were you not of the same Regiment?

Crayth. We were.

Mr. Serj. Clegg. We won't give your Lordship any further Trouble.

Mr. At. And we apprehend we have no Occasion to give your Lordship any further Trouble by way of Reply.

Mr. At. Go. My Lord, as to my Lord North and Grey, we can prove he attempted to get away, and was endeavouring to go to France, and was taken in the Isle of Wight, and that when the Prisoner was seized, he was a Messenger to give my Lord North Notice of it. This last was confided on his Examinations, and we can prove it.

Mr. At. I must submit it to your Lordship, whether his Examination can be admitted as Testimony, so as to affect a third Person.

Col. Mowsey. It is not worth disputing.

Gentlemen of the Jury, This an Indictment against Mr. Leger, the Prisoner at the Bar, for High-Treason. The Treason with which he stands charged, is the compassing and imagining the Death of the King; The Overt-Acts that are laid in this Indictment, as Evidence of this Treason, are several; first of all, that he did meet and consult, advise and agree, to levy War against the King; the second is, that he did publish a seditious and traitorous Writing, exciting and encouraging the People to an Insurrection, and offering Rewards for that Purpose; the third is, that he did engage in a Design to set the Prisoner on the Throne; the fourth, that he did seduce Soldiers against the King; and the last, that he did consult and agree, to take, seize, imprison the King; These are the several Overt-Acts that are laid in the Indictment of the Treason, that is, the compassing and imagining the Death of the King.

My Lord, I must tell you, before I go on to lay before you, and oblige you



the Evidence, what the Law is, and I must tell you, that the Law is undoubtedly so, of a Man is charged with Treason, in compassing and imagining the Death of the King, there must be an Overt-Act of that Treason proved in the Courts where we sit indicted, and in the next Place, if there be such Overt-Act in that County, he may be charged with any Overt-Act of the same Species of Treason in any other County whatsoever. This hath been frequently resolved and agreed, and was hardly ever made a Question. I observed in the Hands of one of the Council, and he took Notice of it, that he had the Trial of Sir William Perrier; he could not but observe there had been by my Lord Chief Justice Holt, if Evidence be given of Treason in one County where the Indictment is laid, he may be charged with any Overt-Act of the same Species of Treason in any other County whatsoever. The Law being so, I will, in the best manner I can, set out the Matters that have been given in Evidence, on this long Indictment, in the clearest Light that I can state the Examination, the Objections that have been made, and the Observations that are proper to be made upon it.

To mention this Indictment, the King's Council have produced several Witnesses. The first Witness is Mr. Lark, the second Witness is Mr. Plunkett; all the other Evidence hath been offered to confirm the Evidence given by these two Witnesses. As to Mr. Lark, he tells you how he came to the Acquaintance of Mr. Laver; that he was an intimate Acquaintance of Dr. Molyneux, and Dr. Molyneux recommended him to Mr. Laver, being then imprisoned, he had several Meetings with Mr. Laver in *Abode*, as in the Griffin-Tavern, and in *Hoboken* at the Griffin-Tavern, and I think at *Southampton-Buildings*.

He tells you, at these several Meetings it was declared, that there was to be a Rising, and it was thought necessary, to make this Rising the more effectual, that my Lord Cadogan, the Commander in Chief of the King's Forces should be seized.

Mr. Lark said to Mr. Lark, he was looked upon as a Person proper for the Undertaking, and he declared that he was willing; and last, it that was the Opinion of those concerned in the Affair, he would undertake to do it: After this, they went to my Lord Cadogan's House, to view the House, and the several Avenues about the House; and after they had taken this View, Lark declares his Opinion, that it was feasible, and he would undertake to do it.

After he had given you an Account of what happened at the several Meetings in *Abode*, then he comes to what was done in the County of *Essex*: He tells you Mr. Lark came to him, and asked him whether he would ride out with him to take the Air? He agreed to it; they both went out of Town together; he said, that as they were going along, Mr. Lark told him his Intention was to go to my Lord North and Grey; he says, they went forward with that Intention, but before they came to the *Green-Mead* at *Leppes-Street*, they thought it would be too late before they got to my Lord North and Grey's for Dinner, therefore they thought proper to halt at the *Green-Mead*, and take a Refreshment there. He tells you, they did stop there at the *Green-Mead*, and at that Time Mr. Lark did repeat the Discourse of the Rising that was intended to be; he said, my Lord *Trentham*, and my Lord *Gertrist* and Mr. *Walpole* were to be seized, a Party were to be sent to seize the King; and that Scheme was laid for having my Lord Cadogan, and that it was proposed at the same Time to put this in Execution at the Breaking up of the Camp. He said, when he was mentioned, as well he made some little doubt, whether that was a proper Opportunity; with that Mr. Lark told him, Pray consider with yourself, if you do not think this practicable, will you propose something else, and we will alter our Scheme?

He said, at this same Time Mr. Lark pulled out of his Pocket a Declaration, purporting an Exaltation and Execution for People to rise and take up Arms against the King, and Rewards offered for that Purpose.

Afterwards they went to my Lord North and Grey's; and that Mr. Lark introduced him to his Ladyship, as his Friend; that they were civilly and handsomely received, supped there, lay there that Night, and staid there the Day after. This is the Evidence given with relation to what was done in the County of *Essex*; and if this Relation be true, no doubt there is a good Overt-Act proved upon him in the County of *Essex*, and consequently the Indictment is well laid in *Essex*, and then the Evidence in the County of *Middlesex* will be a proper Evidence against the Prisoner. But as to this Evidence of Mr. Lark, they say for the Prisoner, Mr. Lark is not to be believed, that he is a vile, profligate Wretch, and no Credit is to be given to him, though upon his Oath; and it must be admitted the Evidence proper Time to put this in Execution at the Breaking up of the Camp. He said, when he was mentioned, as well he made some little doubt, whether that was a proper Opportunity; with that Mr. Lark told him, Pray consider with yourself, if you do not think this practicable, will you propose something else, and we will alter our Scheme?

He said, at this same Time Mr. Lark pulled out of his Pocket a Declaration, purporting an Exaltation and Execution for People to rise and take up Arms against the King, and Rewards offered for that Purpose. Afterwards they went to my Lord North and Grey's; and that Mr. Lark introduced him to his Ladyship, as his Friend; that they were civilly and handsomely received, supped there, lay there that Night, and staid there the Day after. This is the Evidence given with relation to what was done in the County of *Essex*; and if this Relation be true, no doubt there is a good Overt-Act proved upon him in the County of *Essex*, and consequently the Indictment is well laid in *Essex*, and then the Evidence in the County of *Middlesex* will be a proper Evidence against the Prisoner. But as to this Evidence of Mr. Lark, they say for the Prisoner, Mr. Lark is not to be believed, that he is a vile, profligate Wretch, and no Credit is to be given to him, though upon his Oath; and it must be admitted the Evidence proper Time to put this in Execution at the Breaking up of the Camp. He said, when he was mentioned, as well he made some little doubt, whether that was a proper Opportunity; with that Mr. Lark told him, Pray consider with yourself, if you do not think this practicable, will you propose something else, and we will alter our Scheme?

But then you will consider, although Credit is not entirely to be given to a Man of ill Repute, yet if he is supported in his Evidence that he gives by other Evidence, you will consider whether that will not remove all Sorts of Objections as to his Character.

As to the Overt-Act of publishing the Declaration, that is supported beyond Contradiction; for it appears in his Examination before the Lords of the Council, when he is asked, whether he ever saw the Declaration? He says, he never saw any but one, and that was drawn by himself.

Professor. My Lord, what Mr. Stuyves says, I believe, he did not say that I confessed that it was drawn by me.

L. C. J. You must not interpret me while I am directing the Jury. You have believed yourself interpretatively perhaps, but you will not interpret me. I can't bear it. The Substance of what Mr. Stuyves said is, that when it was demanded of you, whether you had seen the Declaration, you said, you had seen none but a rough Draught that was drawn by yourself.

Professor. I beg your Lordship's Pardon, Mr. Stuyves is here in Court,

L. C. J. Is he in Court? Let him be asked the Question again. Mr. Stuyves. My Lord, I believe I did say, that Mr. Lark did confess that it was the Heads of a Declaration which he had drawn himself.

L. C. J. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the Matter, he doth at the same Time confess, That he was the Declaration which he had drawn to my Lord North and Grey, on the Way as they were going to my Lord North and Grey's. This Part of this Evidence is supported by Mr. Lark's own Confession, to the other Part, that he did confess and agree to levy War, confess that he confessed before the Council, that he did go to the *Green-Mead* and the Declaration to Mr. Lark, whether that doth not give Credit to what the other tells. That he went to the *Green-Mead* and that there they talked of the Indictment, and the levying of War, and then went to my Lord North and Grey's, with this, that he recommended Mr. Lark to my Lord North and Grey as a fit Person to lead my Lord Cadogan, and to be concerned in the Indictment.

Gentlemen, This is not the only Matter by which he is supported in this Evidence, that the Prisoner designed an Indictment, and to levy War against the King; but he confessed before the Council, that he went to *Leppes*, had two several Conversations with the *Prisoner*, and was very kindly received by him. He said he asked the *Prisoner*, if he would give him any Credentials that might recommend him to his Friends in *England*; that was objected to, and not complied with; but then asked a particular Favour, that the *Prisoner's* Spouse would stand Mother to his Child, that is granted; and the *Prisoner* himself is willing to stand God-father.

Afterwards, when he returns into *England*, he considered of proper Proxies to represent the *Prisoner* and his Spouse, and asking my Lord *Orrey*, he asked him; then he asked my Lord North and Grey, and was confirmed by my Lord North and Grey that my Lord *Orrey*, the *Prisoner*, and the *Duchess of Grafton* as Proxy for the *Prisoner's* Wife.

He tells you, at this Time when he was at *Leppes*, he had told Sir *John Ainslie*, it would be of great Service if he could have a Fund of Credit to raise Money with. How must that be? Why, said he, let me have black Receipts signed by the *Prisoner* himself; and accordingly he had.

This, he tells you, is what happened at that Time. Now the Evidence given by Mr. Lark, being of an Indictment in *France*, and for the Service of the *Prisoner*, when Mr. Lark comes he had two Conversations with the *Prisoner*, and was received so kindly by him, and had such particular Marks of his Favour, consider whether this doth not support an Evidence, which is given by Mr. Lark.

The next Evidence is Mr. Plunkett; he tells you how he came recommended to Mr. Lark by one *Major Barnwell*, on this Occasion. He tells you, Mr. Lark's Goods were in Execution, and he was employed by *Major Barnwell* to relieve them; accordingly he went and seized a Couple of Soldiers, got into the House, drove out the Officers, and returned the Goods. By this it appears, that Mr. Plunkett was a bold, daring Man, fit to be employed on such an Occasion, and they signify that as Reason which answers the Objection made. Said Mr. Lark, How came it to pass, that when I had given him this Man, that I of a sudden should have such a Confidence as to trust him in an Affair of this Nature? Is answer to that, it is said, he had done him a singular Service before, he had done a bold Act, he had got some Grenadiers and relieved his Goods when they were taken in Execution, and likewise *James Plunkett* he given a Character of him, that he looked upon as an honest Man, and therefore recommended him to Mr. Lark.

Then he tells you, that Mr. Lark said they wanted a Man to go on this Occasion; that *James Plunkett* talked of Officers, but we do not want Officers so much as we do brave Soldiers, old Soldiers, such as he is ready and qualified to support the Mob, and to discipline and lead them; there are the Men we want, can you see such as these? Such as you say, that will be able to discipline the Mob and put them in Order. I told him (says the Witness *Plunkett*) I would do my Endeavour, and accordingly I advised him, that I had procured twenty-five ready for the Service; he desired to have Lists of their Names, and the Places of their Abode, that he might know where to find them upon Occasion.

Now the Objection to this Evidence being only, How comes it to pass that a Man should be trusted with such a secret, and this on the first Sight or Acquaintance? Why, said he, I had been employed before and had been myself faithful on other Occasions, and did serve him, trusting his Goods, when they were seized upon in Execution, *James Plunkett* recommended me. This is the Evidence of *James Plunkett*, and if *Plunkett* swears true, if he was desired by Mr. Lark to procure and list Men for the Service of the *Prisoner*, and he says and declares he did do it, then, if this Evidence is to be credited, the *Prisoner* at the Bar is guilty of the Treason whereunto he is charged: But still they rely upon it, and hope you will not give Credit to the Witness. You hear what hath been answered by the Council for the King, and observe to you now, that though he was such a Change against the Witness, the King's Council have produced several Persons that had good Affairs, and seemed to be Men of Reputation, who say, they know them, and believe them to be Men of Reputation.

Then, Gentlemen, the next Thing insisted on is, that the Evidence given by *Lark* and *Plunkett* is supported by the Papers that were kept in Mr. *Alston's* Custody. Consider how that *Master Bunter*, Mrs. *Alston* tells you, that Mr. Lark brought two Packets of Papers sealed up to her, and told her, they were Love-Letters; the Guy, she desired to keep them by the Prisoner; and accordingly he did keep them for him; and you have it afterwards in the Witness, who have been produced, and against whose Credit there is no Exception, one *James* a *Warrant* against Mrs. *Cook* and Mrs. *Alston*, they came to Mr. *Cook's* House to search for Papers, and in Mrs. *Alston's* Room there was a Trunk which was locked; they ordered it to be opened, which Mr. *Alston* did, and they took out of the Trunk two Bundles of Papers sealed up.



as you have heard, they tell you the Bundles of Papers were opened, they let their Marks upon each Paper, and one of them did not immediately let his Mark, but afterwards it proved that he kept them from the King. I saw they were delivered to him till the other came back again, and then upon his Return he delivered them back again to him; then he let his Mark upon them. Both in their Marks upon them, and therefore they fear that they are the same Papers that were taken out of Mrs. Ashby's Trunk. Then, if Mrs. Ashby swears true, they are the Papers of Mrs. Ashby, which were delivered to her by him; and to tracing it from hand to hand, they are the same Papers that were found in Mrs. Ashby's Caddy. Mrs. Ashby swears the same, and she also let her Mark upon them.

But, faith Mr. Loyer, there is no Credit to be given to Mrs. Ashby, for she is an old Woman, an infamous Woman, therefore her Evidence is not to be regarded.

Gentlemen, consider how this Matter stands; in one of the Paquets of Papers were found the *Protector's* Receipts, which Mr. Loyer before the Council said, he had defired his *Witness* Edith to procure for him from the *Protector*, and which he had accordingly procured, and that he had procured them, and these Receipts being in the Paquet found upon Mrs. Ashby, how came they there, if they had not been delivered to her by Mr. Loyer? Therefore these Receipts being in the Paquet, plainly demonstrate that these Papers are the Papers of Mrs. Loyer, and were by him delivered to Mrs. Ashby: And if they were his Papers, these Papers, and which is contained in them, will be a strong Evidence against Mr. Loyer, notwithstanding all this. Now, Mrs. Loyer, these were given my Papers, in a *Forgery* or *Perjury*. Whether or no you will believe these Papers to be Mr. Loyer's, when it appears these Receipts were found amongst them, besides that, here is a Paper amongst them, that the *Witness* that is produced by Mr. Loyer, one that was his Clerk, testifies that it is his own Hand-Writing; how came that there, if it be not the Bundle and Paquet of Mrs. Loyer? And on this they turn the Strength of their Case.

It is to be feared, faith here is a Scheme, whole Hand-Writing it is, here hath been Variety of Evidence as to that. It is relied on by the King's Counsel, that the same is a Scheme of Mr. Loyer's Hand-Writing; and if, this is a stronger Evidence against Mr. Loyer, than all the Papers that have been only found in his Caddy. How stands that? Here is one that was Mr. Loyer's Master formerly, who faith, he really believes this to be the Hand-Writing of Mr. Loyer; if that be so, then all is well, and ought to be read, not only as a Paper that was in his Possession, but as a Paper that was written by him. They dispute, and say, 'tis not his Hand-writing; they add this *Witness* how long it is since the Prisoner said with him as his Clerk, about fourteen or sixteen Years ago, says the *Witness*, if Mr. Loyer's Hand, they may be changed in that Time. But, faith the *Witness*, I really believe it to be his Hand-Writing, for I have within three Days received several Letters from him about Business, there being a Correspondence between him and me, I being his Agent in Town, and these Letters are of the same Character he used fourteen or sixteen Years ago, therefore I believe it to be his Hand-Writing.

But, say the Council for the King, we won't only prove this by these Gentlemen, but the Prisoner himself hath confessed it. Well, how stands that? He confessed, when he was at the Council-Table, what he knew of Arns that were provided? He said, he knew of none. To which when it was said, how came you to mention it in this Scheme of your own Hand-Writing, then you take Notice of Arns that were provided? Deth Mr. Loyer answers it? No, faith he, 'tis a Mistake, I should have said, which should be provided.

Gentlemen, take this together, consider with yourselves, what the Import of it is. He faith, when he is asked about these Arns, I should have said, which should be provided. Whether this doth not amount to a Confession of this Matter, must be left to your Consideration, as a confirming Evidence of what the other *Witnesses* have said. But, faith Mr. Loyer, in my call a *Witness* to prove that it is not my Hand-Writing. He calls a Gentleman, and he says it is not his Hand-Writing, he calls his Clerk, and his Clerk faith it is not his Master's Hand. Here are two *Witnesses*: Then there is an additional *Witness* on the other Side, and that is, his own Confession. Whether a Scheme to a Confession must be left to your Consideration; but if this Scheme be not of his own Hand-Writing, it was a Scheme which he had in his Caddy, and that alone had been a considerable Evidence against him. How came he by this Scheme? What had he to do with it?

The Scheme hath been read to you, which tells you the several Methods to be proceeded in. In the first Place, the *Tower* is to be seized, an Officer is to mount the Guard that would be in their Interest, and as near a Clock at Night they are to seize the *Tower*: Then they are to go to the *Black*, and set a Guard there, after they have taken out Money from thence: After this he tells you of several other Guards that are to be set in other Places, and then a Party is to be sent to seize the King; then he tells you, another Party is to be sent over the Water to seize his Royal Highness the Prince; he calls him by a Court Name, but 'tis plain he is meant.

If this be all his own Hand-Writing, it is a strong Evidence that he was in this Conspiracy; but if he had only a Scheme of the Nature in his Caddy, that will be an Evidence against him, that he did not write it.

Now, whether every Body is so qualified that these Bundles were his, when in their Bundles their Receipts signed by the *Protector* himself, and the Paper that was of his Clerk's own Hand-Writing, were found, it gives a great Way to confirm the Evidence of Mrs. Ashby, who swears the Bundles to be his Papers.

These are Matters of Evidence, and must be left to your Consideration. Then they go on and examine the treasonable Papers, the Notes, the Lists, &c.

To raise an Information Money would be wanting, faith Mr. Loyer, I told his *Witness* Edith this. Upon that there are Receipts signed by the *Protector*, by which the Prisoner said they might take up Money on that Occasion. Sir *William Edith* agrees with me, faith Mr. Loyer, and answers VI.

coolingly sends me Receipts, and I had them, and they were found in this Bundle of Papers; and how came they there, if they were not Mr. Loyer's Papers?

Consider the other Papers; the Design being for an Infurrection, they are to engage the Guards in their Service; you see that several Papers are found in these Bundles that contain an Account of the Number of Men that were in such a Troop of Guards, the Number in such a Troop of Grenadiers, and tells you what the Numbers were, what was the numbering of all this? How came this Gentleman to be so follicitous in examining into the Number of Guards and Officers, but only to get a true State of this Matter, that he might know who were the Persons that were most likely to be corrupted, and what a Number of Enemies he might meet with on this Occasion?

These are very strong Circumstances against Mr. Loyer, unless Mr. Loyer can give any Account why he kept this in his Papers so carefully.

To go a little back, as to the Evidence of Mr. Loyer; it appears he did not know Mr. Loyal before this Affair was set on Foot, he rode out with him, goes to the *Green* Ash with him, there they talked over this Affair, there he published that treasonable Declaration, and afterwards presented Loyal to my Lord North and Grey. How came they so intimately acquainted unless on this Occasion?

Then, Gentlemen, they go on and tell you, when this Gentleman was committed into the Caddy of a Messenger he made his Escape, and thus we look upon as an Evidence of Guilt, not a conclusive Evidence; a Man may escape that he is innocent, yet 'tis an Evidence that is material to be left to the Jury, and is proper for their Consideration; he is persuaded and mistaken, when he is mistaken he is under great Consideration, he begs for the Lord's Sale they would let him go, and find it was an Arrail, he took out of his Pocket a great Number of Guineas, and said, they should have what Number they pleased, if they would let him go; this is a material Circumstance, and doth show that this Gentleman was more than ordinary concerned in this Affair.

You will say these Things together, and consider how far they satisfy you, that this Gentleman is guilty of the Treason.

Then they give you an Account how he did confide before the Lords of the Council every Thing that he had sworn by the *Witnesses*: That he went to the *Green* Ash in your County, and there he confided and agreed to carry on this Affair; that he did take out and read the Declaration; this is a strong Evidence, especially if compared with what he said, that he had Two Conferences with the *Protector* at *Ken*, was kindly received by him, and had particular Marks of his Favour: He is desired to stand God-father, and his Wife to stand God-mother to his Child; and accordingly they stand, he delivers my Lord North and Grey to hand as Proxy for the *Protector*, and the Duchess of Devon to be Proxy for the *Protector's* Spouse; and they were Present at the Candleing of his Child. These are the Circumstances that have been laid before you on Behalf of the King against the Prisoner at the Bar. But 'tis laid on the Behalf of the Prisoner, that he stands at the Bar upon his Life and Death, which will depend upon your Verdict.

I think you ought to consider of that, and that I hope will induce you to consider and weigh well the Evidence, and not to find the Prisoner Guilty, unless you are satisfied he is so.

It is true, here is the Life of a Man in the Case; but then you must consider likewise the Military and Declaration, the Blood and Confusion, that must have happened if they had taken Effect, and put one against the other; and I believe that Consideration, which is on the Behalf of the King, will be much the stronger.

These Things are proper to be considered, in Order to prepare you to be careful in examining and weighing the Evidence well; but in giving your Verdict I hope you will lay them all aside; you will consider the Weight of the Evidence on either Side, and the Credit of the two *Witnesses*, and how far they are supported by a Writing under his own Hand, a Confession at the Council-Table, consider how far that will support their Evidence, though not Men of the clearest Reputation.

A Cyprian hath been taken Notice of, by which we have explained several Names that such and such Persons and Things were to be called by; there was the Name of *Adrian*, which was to signify the *Protector*; there was another Name for the *Protector*, and that was *St. John*, and conformable to these Names they have read several Letters, by which it appears that a treasonable Correspondence was carried on by Mr. Loyer. This is the Circumstance of the Evidence that hath been laid before you. Consider this Evidence, and the Objections that have been made to it, and how far their Objections have been answered.

Discharge the Part of *Honour* Men, consider and weigh well the Evidence.

Upon the whole Matter, if you do believe that there was an Overt-Act of Treason in the County of *Essex*, and that it was proved by Mr. Loyal, and confirmed by the Confession of Mr. Loyer; and if there be any Overt-Act in another County, as his lifting or employing any to lift or engage Men in the Service of the *Protector*, then you will find the Prisoner guilty.

If you are not satisfied these Things are true, then you'll acquit him.

The Jury withdrew for about half an Hour, to consider of their Verdict, and when they returned they said, were called over by the Clerk of the Court to give their Names.

Cl. of the Cr. Gentlemen of the Jury, are you agreed on your Verdict?

Jury. Yes.

Cl. of the Cr. Who shall say for you?—Jury. Our Foreman.

Cl. of the Cr. Christopher Loyer, hold up your Hand. (Which he did.) You of the Jury look upon the Prisoner.

How say you? Is Christopher Loyer guilty of High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Cl. of the Cr. What Goods and Chattels, Lands and Tenements had he at the Time of the said High-Treason committed, or at any Time Since, to your Knowledge?

Jury. None.

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Cl. of the Cr.



*Cl. of the Cr.* Hearken to your Verdict as the Court has recorded it. You say that Christopher Laver is guilty of the High-Treason whereof he stands indicted; and you say he has no Goods nor Chattels, Lands nor Tenements at the Time of the said High-Treason committed, or at any Time since, to your Knowledge, and to you say all.

*Mr. At. Gen.* We pray a Rale may be made to bring up the Prisoner to receive Sentence.

*Mr. Just. Egre.* He must have four Days to move in Arrest of Judgment. Let there be a Rale to bring him again upon Thursday next.

Then the Prisoner was removed back to the Tower.

*Die Martis 27 die Novembris, 1723.*

Christopher Laver, Esq. was brought to the Bar of the Court of King's Bench, in order to receive Sentence.

*Mr. At. Gen.* MY Lord, the Prisoner at the Bar stands convicted against him for the King.

*Cl. of the Cr.* Christopher Laver, hold up thy Hand. (Which he did.) Thou hast been indicted for High-Treason, for compassing and imagining the Death of the King, and thereupon been arraigned, and thou hast pleaded not Guilty, and for thy Trial put thyself upon God and thy Country, which Country hath found thee Guilty; what canst thou now say for thyself why the Court should not give Judgment of Death against thee according to Law?

*Mr. Hangerford.* Is it your Lordship's Pleasure to give any Directions touching the Matter of the Plea, being in Issue? I hope your Lordship will order them to be taken off, at least during his Arraignment here.

*L. C. J.* I don't know, there is none of the Cases that have been, which go further than during the Time of his Trial, his Trial is over, if he hath any thing to offer to the Court, and think he may not be able to do it so well while he is under their Irons, I would recommend it to Mr. Attorney, not to make a precedent of it, that his Irons may be taken off.

*Prisner.* Yes, my Lord, I have a great deal to say, which I shall offer in Arrest of Judgment.

*Mr. Hangerford.* He hath complained since he hath been here, that he is in great Pain, in the Prisoner he stands with his Irons.

*L. C. J.* Counsel, Brother Judge, have you any thing to object against his Irons being taken off, or do you consent to it?

*Mr. Serj. Fing.* My Lord, we don't oppose it.

(Then his Irons were taken off.)

*Mr. Serj. Fing.* My Lord, the Prisoner at the Bar, Mr. Laver, after a long and a fair Trial, hath been found guilty of High-Treason; and on Behalf of the King, we pray the Judgment of the Court against the Prisoner.

*Mr. Hangerford.* By your Lordship's Indulgence, I am Counsel for the Prisoner at the Bar, I have, and I hope shall continue to do him what Service I can: The Prisoner's Life is at Stake, and I hope I shall not be supposed to be troublesome, if I desire a Record to be read, which hath not been yet read in Court; it is the *Verdict*, and that being part of the Record, we think we are proper to have it read.

*Mr. Serj. Fing.* We apprehend it is such a Request as has never been made: If they have any Objections to any Part of the Proceedings, or any Exceptions to take, they are at Liberty to take them, and to state their Objections, that the Court, if necessary, may refer to the Record, in for whether they are just or no; but to come and desire the Process to be laid before the Court for the Information of the Prisoner and his Counsel, it never hath been done: They are now led now to offer any Thing, if they can, in Arrest of Judgment.

*Mr. At. Gen.* If what they desire should be granted, it would be a Precedent which might be of very ill Consequence, and I apprehend what they desire, is directly contrary to Law; there are no Authorities that the Prisoner should either have Copies of the Process, or that the Process should be read to him, only to enable him to find a Fault. I believe no Influence can be given whatsoever, that it was ever allowed in a Case of this Nature, if it be done now, it will be a Precedent for the future.

The Act of Parliament went so far as was thought proper, Copies of the Indictment and Copies of the Names of the Jury and directed to be delivered to the Prisoner; but as to any of the Process, the Act gives no Direction, and therefore as what they desire is neither founded on Law, nor Precedent, we hope it shall not be granted.

*Mr. At. Gen.* MY Lord, Mr. Hangerford has been pleased, in the Course of this Case, frequently to put us in mind, as he does now, that what he has insisted on is in Favour of Life. That is a moving Argument, but it proves nothing, since that the Prisoner ought to have all the Indulgence which the Law and the settled Form of Proceeding do allow; but I apprehend it is a Reason for no more. What is asked, is of more Consequence than appears in this particular Case; and whatsoever your Lordship hath now, will be made a Precedent for the future.

My Lord, before the Act of Parliament, which allows the Prisoner to have a Copy of his Indictment, and of the Panel of the Jury, it is most certain, he was not entitled to have such Copies. Before that Law was made, he was informed of nothing but by having the Indictment read to him in Court upon his Arraignment, and that not being to give him an Opportunity of taking Exceptions to it, but from the Necessity of the Thing, because it was the Charge to which he was to answer. Then comes the Act of Parliament, the 13th Year of King William, and allows the Prisoner a Copy of his Indictment, and of the Panel of his Jury. But the Legislature, when they had these Matters under their Consideration, and from to have intended to give at least all the Indulgence, consistent with Reason, to Prisoners in Cases of High-Treason, even at that Time they went so far, and did not think fit to direct that to be done, which is now desired on the Behalf of this Gentleman. Therefore this Motion of Mr. Hangerford's must be understood to be made at Common Law; but I must be leave to rely upon it, until some Precedent is produced on the other Side, that there is no Influence whatsoever, either before or since the Act of Parliament, whereas any Record of the Proceedings hath been read

to the Prisoner before the Indictment. This is a Consideration merely of Practice and Regularity; and in a Point of that kind, where there is no Precedent, I hope your Lordship will not make one.

*Mr. Serj. Calk.* MY Lord, the Carriage and Behaviour of the King's Council towards the Prisoner hath been so fair and candid, that it deserves Thanks from him, rather than Complaint; and I believe that the Prisoner will hold on to the last: But, my Lord, we have no Authority to give up the Right of the Crown, or to ask that on the Crown, to grant which the Prisoner hath no Right to demand.

My Lord, it must be admitted, that this is a Demand made at Common Law; and if it be a Demand of Right, I don't know but it may be to every Thing in an equal Degree; that he hath the same Right to demand a Sight of the Commission, *Generari*, &c. I don't know but he hath the same Right to enquire into every Step that is upon Record in this Case. The Officers concerned, I dare say, have done their Duty. There is nothing of Law, but what comes in upon the Statute of King William, that he hath had the Benefit of to the full extent of it; he hath had a Copy of the Panel of the Jury, he hath had a Copy of the Indictment, and in each Time as was proper for him to make due use of it, and this they ask now, we apprehend, is only to lengthen out our Time, and introduce that which may be greatly inconvenient. We have very little Reason for apprehending that it can be of any Profit to him; but for the simple sake, and as he hath no Right to it, we cannot carry it into a Precedent to it.

Therefore we submit it to your Lordship's Consideration, from the Inconvenience that may ensue from the Prisoner, whether the Prisoner may have any Right to make this Demand?

*Mr. Hangerford.* I acknowledge that before the 13th of King William, the Prisoner was not entitled to have a Copy of his Indictment, and therefore I fear to concur with the Gentlemen of the other Side, that we are entitled to a Copy of the Record of the *Præfatus*. But what I demand, pray now, is, what I apprehend we were entitled to before the Act of Parliament for regulating Trials in Cases of High-Treason. The Statute as several, where in the Course of a Trial for High-Treason before the Act which your Lordship moved now Advancements, the Prisoner hath desired his Indictment to be read, and the Court never denied him, to have any other Part of the Record to be read, seems to be so reasonable as the Indictment. The Objection had been stronger, if we had insisted for the Prisoner at the Bar the Copy of the *Verdict*; there we thought have been justly said, that we had been entitled to nothing but what the Act of Parliament had directed, viz. the Copy of the Indictment. We pray, Copy of nothing, but only pray that a small Part of the Record that entitles up the whole Record at this Gentleman's Consideration, may be read. And thus, with Submissions, we hope we are entitled to have for the time being as the Indictment was read before the Act of Parliament, that before the Indictment should be read, and it is so. And can any Reason be offered why the *Verdict*, which is but a Part of the Record, should not be read as well as the Indictment? No part of the Record of the Consideration is suffered than the other; and why therefore should not one Part be read as well as the other?

*Mr. Serj. Fing.* Can you show any Case where the Indictment was read upon the Prayer of the Prisoner, after Conviction, and before the Execution taken?

*L. C. J.* We would be far from refusing any Indulgence to the Prisoner that by Law we are warranted to grant him; what you ask now, is to read over in witness any Proceedings whatsoever. You know, that before the Act of Parliament, you were not entitled to, nor could demand a Copy of the Indictment. It is very true what you say before the Act of Parliament, when it hath been desired by the Prisoner the Indictment hath been read, and that Method of proceeding having been allowed, gave him Right to demand it, but you cannot produce any one Instance that he should be demanded that now you offer, that ever he demanded the *Verdict* should be produced and read to him.

Consider how strict the Law was in Cases of High-Treason; for the Act of Rights: The Court of the Court is the Law, and what you now ask him was never so much as asked for, nor did the Court ever grant it, nor if so, how can the Court be warranted to grant that which was never granted, nor was ever desired to be granted? The Reason of it is, that every Body was satisfied by Law it could not be granted.

You have insisted in Cases of great Persons, Colonel Sydney, Lord Russell, and others that have been attainted of High-Treason, who could not want Advice to desire any Thing that was proper, or that they had Right to demand. Neither they nor any of the greatest Quality that had had the Misfortune of being tried for an Offence of this Nature, ever demanded it, which is an Admission that they were not entitled to it, and if the Court of the Court be so, we must not establish a new Course, nor can't we what the Consequence may be.

*Mr. Just. Egre.* The Case of reading the Indictment to a Prisoner is certainly very different, and can be an Authority to warrant the reading of the *Verdict*, for the Indictment is the Charge to which the Prisoner is obliged to plead, and he must know his Charge before he can give an Answer. Besides, the Merit and Justice of the Case depend entirely upon the Indictment, which must be read, in order to understand the true State of the Question, and to see the Facts to which the Witnesses are to be examined. 'Tis therefore absolutely necessary, that the Indictment should be read, but none of these Reasons will serve for reading the *Verdict*, which is only to furnish the Jury, and bring them to the Bar; and therefore it is never done, nor ever asked before, I can be no means think it fit for as to allow it now.

*Mr. Just. Fing.* I think it is a perfect Novelty what you demand, and not only so, but in its Consequences very dangerous: For, properly speaking, the common Usage to move in Arrest of Judgment hath been on of the Indictment, but to run back to these Things, which if you had Right to demand, it had been proper to have done it before, and you have many Times known that nothing but the Indictment hath been read, since the Judges were never moved, nor any Thing



this kind done, and nothing in the World hath been demanded like it: it should be granted at this Time, when Men are to receive Judgment, and Exceptions are to be taken to the Indictment, if they should run back to all the Proceedings, it would be a thing of strange Consequence, but before that, it is a Thing you have no Example for, it hath been never done, and it hath been observed, that nothing but the Copy of the Indictment hath been read before this Act of Parliament of King William.

Now there are two Things given by this Act of Parliament of King William: The Prisoner is to have the Copy of his Indictment five Days; the Copy of the Panel of the Jury two Days before his Trial; and these were proposed as Advantages which the Common Law did not admit: Shall we come to unravel all the Matters preceding? It would be a Matter of strange Consequence, and what we can't do or warrant by Law. If you have any Thing to move out of the Indictment, we are ready to hear it.

Mr. Just. *Joseph Aland*. This is perfectly new, or else in Favour of the Defendant should be ready to grant it: The true Reason of having the Indictment read is, that the Prisoner may know what his Charge is, in order to make his Defence as his Trial; but that Reason holds not in this Case, which is after Conviction; and what is offered now is not relative to his Charge, but concerns the Acts of the Court only. The Court will still sit in Matters of Law, when they appear, but will never sit the Prisoner with Evidence, in order to make Points of Law; and therefore it has been denied the Prisoner to take Matters even of the Indictment; and for the same Reason Counsel has ever been denied, in all capital Cases, before the late Act of Parliament, unless a dispensable Point of Law did arise and appear.

You move that Matter as a Motion purely at Common Law; and as such it will extend to all Indictments of Murder, and other capital Cases, which may be of very evil Consequence. It would be very strange to have all the Proceedings upon Indictments read to the Prisoner; and there was much Reason to call for all as for the *Passo fieri*: I take it clearly there must be a Case, where the Acts and Proceedings of the Court have been called for to be read to the Prisoner, and for no other Purpose but to make an Error: it is a Thing that is entirely new, the Consequences may be very fatal, and therefore I think it an unreasonable Motion, and ought not to be granted.

Mr. Harg. I desire your Lordship I did so do it out of an Affidavit of Noveler, whether shall I persist in urging is further, since the Court has given their Opinion; but I thought the Reason of the Thing, in passing the Indictment, before the Act of Parliament was with me, but now it is your Lordship's Opinion that it is otherwise, I desire your Lordship to give me leave to go on.

*Prisoner*. I beg leave to say but a short Word in respect to this Objection, in that he made by Mr. Hargreaves. If I take the Thing right, now, that the *Passo fieri* may be read, so far as it is properly issued, and I hope that it shall be granted, to show a Reason why this *Passo* is returned on one Day, and the Jury appear on another; and it doth appear that there is an Error in the Proceedings on the Foot of the *Passo*, I humbly hope I shall have the Benefit of it. The Objections I make it, shall be in this *Passo*, I take it, is returnable the 19th of the Month of November, I was not try'd till the 31st; therefore, what I humbly offer is, whether or no, after the Return of the Jury, there is a good convening of the Jury together to try me on a Writ, when there was no such Writ in being, more especially when the Proceedings against me are by Original, where the Return to the Court are the same as in the Common *Passo*; so I shall leave to my Counsel to say the rest, and humbly hope, that I shall have leave to look into the *Passo*, and if it come out so, I hope it is erroneous, and that Judgment shall be arrested.

Mr. Harg. The Gentleman hath given Utterance to some of my Thoughts; and not by comparing of Notes, for I have not seen his Face, nor heard from him since I last saw him at the Bar at his Trial.

That which occurs to me on this Occasion, but I can but guess at some Part of the Fact, is, I take it, that the *Passo* bears Teste the last Day of October, and is returned the 19th of November; they are fixed Return Days of the Law; and, my Lord, if a Man appears in a Court of Justice one Day, and he is not by the Course of Proceeding indulged with a further Day of appearing, there is a Discontinuance of the Process, and the Man is out of Court. The different Days the Law takes notice of for this Purpose are, the Effigies Day, the Day of Exceptions, the Day of Appearance, the *quarto die post*. I take the *quarto die post* to be an Indulgence which a Court of Justice gives to a Prisoner to appear at a further Day, when he ought to have appeared at a former Day, and this is the Practice in real Actions in the Court of Common Pleas. As to the Exception Day, the Use of that is, that a Man that is summoned may object to the Summons, as not being a fit and regular Summons to draw him in Contempt.

But, my Lord, in Cases of Justice, who are not Seisons in Court, I take the Law and the Practice to be, that they are obliged to attend upon the Process of the Court; I take it, they must do Duty on the Return of the *Passo*, which, in this Case, is on Monday the 19th of November, and did not appear till Wednesday the 31st; so that if they were to appear on Monday the 19th of November, and did not appear then, there must appear after the Act of the Court, by which they are indulg'd to a further Day. And I put it upon Mr. Hargreaves to show, whether there is any Indulgence of the Court entered upon Record for the continuing of the Jury till Wednesday following, and if there is not, there is then a Discontinuance of their being in this Court, and consequently the Proceedings are irregular, and the Trial a Nullity: I shall quote four Authorities which justify this Observation; when a Man by a Process of Court appears on the Day of the Return of that Process, with this be a Continuance of that Process, that *quarto die post* of the Jury, or a subsequent Process signifies that Day, the Law does not think that Chafe in the Proceedings to be a Discontinuance, and that the Party is out of Court. It was so resolved in *Yalborne*, 20.3; and 3d *Coler*, 28. It is the Case of *Bradley and Rooks*; and reported in both Books, but most fully in *Yalborne*. There is an Authority which weighs with me something more, and seems to be

a Case at Point; it is the Case of *Pepley and Rooks*, 2d of *Coler*, 357. and there the Case is on a Writ of Error brought upon Proceedings in the Court of *Star Chamber*, where the Usage was, so hold Plea in some real Actions, and there was an Entry that the Parties did not appear on a preceding Day, but made Default; And the Entry was *Edict done per default* given to the Party by the Court, *secundum consuetudinem iure procedite*. This came before this Court by a Writ of Error, and it was adjudg'd, that both the Entry and the Custom were naught. The Reason assigned why the Entry was so, is, for that the Party having made Default was out of Court, and the Court could upon that Process give him no new Day to appear. And the Reason why the Custom left it is naught, is, for that there can be no Custom to help that (which the Book calls) a Discontinuance at Common Law; for if the Man be out of Court, he can't be brought in there again by the same Writ.

My Lord, if that be the Case then, that the Jury were to appear on the 19th, and there is no Entry to continue them till Wednesday the 31st, then by the Authority of these Cases they had no Call nor Right to appear, but were out of Court, the Trial was no legal Trial, and consequently so Trial at all.

I am told, that the Practice of all Trials at *Pier* is, that the Jury do appear here on the Return of the *Passo*, and immediately proceed to do Business, why should it not be so too in a criminal Case, as this is? I think the Reason in both cases is the same: I humbly hope therefore, my Lord, that if this shall be so, I have requested, that there is no Entry to continue over the Attendance of the Jury from Monday to Wednesday, there is a Bench in this Proceeding; and you can't proceed to Judgment against the Prisoner at the Bar.

Mr. At. If your Lordship will favour me—  
L. C. J. You shall be fully heard, but because Mr. Hargreaves hath appear'd to Mr. Hargreaves, I shall ask Mr. Hargreaves this Question about the Matter of the *Passo*.

Mr. Hargreaves. I shall be very tender in this Matter, where the Life of the Prisoner is at Stake, as Mr. Hargreaves has observ'd, and will not say any thing but what I am sure is the Course of the Court. It is a Rule to returnable the full general Return of the Term, the Appearance Day of the Jury is the *quarto die post*, which is the first Day of the Term. If the Court be not pleas'd to try the Prisoner then, they may adjourn the Jury over to any Day before the next Return of the Term; but no Entry is ever made on Record of such Adjournment, and the Proceedings are always enter'd on Record to be at the Return of the Writ. In all other Returns in the Term, there is the same Course observ'd: The Jury is never oblig'd to appear before the *quarto die post*, nor can the Prisoner be try'd sooner. What makes this clear is, to consider the Proceedings on *Deforclore*, where the Prisoner is not try'd on the *Passo*; in such Cases the *Deforclore* is never return'd on the Return Day, but the *quarto die post*, which, if what is insisted on by the Prisoner's Counsel as Law, would make a Discontinuance, and that has always been held otherwise; for till there has been a Default of the Jury's appearing on the *Passo*, no *Deforclore* can arise, and no Default can be objected to the Jury for not appearing till the *quarto die post*; nor can they be ever pleas'd to appear. This Matter was settled on great Deliberation by my Lord Chief Justice Holt, and I am confident, has been ever since so proceed.

Mr. At. My Lord, it was my Solicitors not to get into Court sooner; so that I did not hear the full Application Mr. Hargreaves made to your Lordship on Behalf of the Prisoner, nor shall I presume to break in upon what your Lordship has already determin'd, but whether or not we are oblig'd to fix the *Passo*, or head that Part of the Record, I hope we shall be able to make out, that there has been a Misfall in this Case. The *Passo*, it is agreed on all Hands, was returnable *ante Novemb*, which was Monday the 19th of November. That the Prisoner was not try'd till the 31st, is most certain. The general Return was *ante Novemb*, and he was not try'd till two Days after; and accordingly, what Mr. Hargreaves hath said, I must beg Leave humbly to insist, that there has been a Misfall, and Judgment ought to be arrest'd, and for that I have as strong an Authority as any that can be cited on this Court, 'tis the Trial of *Richard*; and for the greater Certainty, I have brought the Book along with me, and have it in my Hand; where it is agreed by the Court, and all the King's Counsel, that the Trial must be on the Day of the Return of the *Passo*, or else that it would be Error: And my Lord Chief Justice Holt declared, the Issue could not be tried after the Day of the Return. This Matter came before the Court upon an Exception taken by Sir Nicholas.

Mr. Just. *Eyes*. That was on a Constitution of *Oyer* and *Tenuer*, which was quite different; there is no *quarto die post* there, no Day of Appearance, but the Day of the Return of the Writ.

L. C. J. It must be so, because there is no such Thing as a *quarto die post* in Constitution of *Oyer* and *Tenuer*.

Mr. At. I submit it to your Lordship, whether there is any *quarto die post* in a *Prætor*?

L. C. J. It is always so.

Mr. Just. *Eyes*. You know we had the Consideration of this when we appointed the Trial.

Mr. At. I beg leave to offer one Word, that, in case of a *Prætor*, there is no *quarto die post*, because there is no *Effigies*, no Exception Day for the Jury. The Authority on Sir R. Alington, 21.2. *Pleas* 4. *U* 6. is express, that in a *Prætor* there is a *Sore* *Process*, there is no *Effigies*. And where there is no *Effigies*, there can be no Day of Exceptions, because the Exception depends on the *Effigies* Day, and consequently the Day of the Return and of the Appearance must be the same. The Case of *Edgins*, *Excepss*, *Return*, and *Appearance* Days, concerns only original Writs, and the Plaintiff and Defendant there; when if the Defendant appears the *quarto die post*, his Appearance shall be accepted as good, and no further Process made against him. But where he is not a Jury were oblig'd? There are several other Authorities for this. *Dubin*, 41.5. 2d *Edm*. 125 *U* 33 *VI* 5. A. that no *Effigies* lies upon a *Prætor* case; and the *Effigies* was quash'd.

L. C. J. This you now offer will fit aside all the Proceedings either on the Plea Side, or the Crown Side.

Mr,



Mr. Ketchley. There is a Cafe imported in the Year-Book, *Mish. 33 Henry VI. fol. 35. 36.* and abridged in *Breake, Title Nyffries, Pl. 39.* It was disputed by the Judges of the Bench, and at first there was a Difference of Opinion among them; but at last it was unanimously resolved, That the *Nyff* was not well taken. I will state the Cafe as it appears in the Year-Book and the Abridgment. There was a Writ of *Nyff* *infra* made with a certain Return, and the Judges tried the Issue upon a Day *nocte* during the Interval between the *quarto die post*, and the Return of the Writ. This was objected to, and said to be a *Mis-trial*, and afterwards the Judges agreed in their Opinion, that it was a *Mis-trial*, because it was not upon the Return-Day of the Writ of *Nyff* *infra*; and if not upon that Day, the Trial ought not to have been at all. And I don't apprehend any Difference between that Cafe and this, but only that it was at *Nyff* *infra*, and this a Trial in Bank. There is no Continuance less at *Nyff* *infra*, and at *Nyff*, I shall submit to, whether there is any Day of Appearance.

Mr. Jull. Esq. Sure there is a Day of Appearance on the *Præfix* *foris*; the Proceedings in this Cafe are like those upon an Original. The same Day which is the Day of Appearance for the Party upon an Original, is the Day of Appearance for the Jury upon a *Præfix*.

Mr. Ketchley. I believe it will be laid for this, *Hæretic* to show where there is an *Adjourn* on a *Præfix* *foris*.

L. C. J. We have been already what Mr. Hæretic hath said. I decline Mr. Steward, to inform you how it is on the Civil Side.

Mr. Steward. Our *Præfix* where the Suit is commenced by Bill, is return'd on a Day certain in Court; that does not respect this Cafe.

L. C. J. How is it when it is by Original?

Mr. Steward. Where it is by Original, it is always returnable as the *Præfix* is in the *Comme* *Præfix*; and the Day of the Appearance of the Jury, I take to be the *quarto die post*.

Mr. Hæretic. If this was to be a Discontinuance, which will become of all the Records where the Proceedings at general Returns, and which are tried on the *Præfix*, which always bears up to the *quarto die post* after the Return of the *Præfix*? Every one of these Records, which at every every Term, would be discontinued.

L. C. J. You can't but be sensible that there is nothing in this Exception.

Mr. Serj. Pender. There is no Foundation for it as *Præfix*.

L. C. J. You need not labour it.

Mr. Serj. Pender. The Sheriff, or the Jury, are not amenable, tho' they did not appear on the Day of the Return, if the Jury do appear upon the *quarto die post*, that is the Case is—

Mr. Jull. Esq. If this Objection prevails, it will overturn all the settled Course of Trials at Bar.

Præfix. One Thing I would humbly offer to your Lordship. I have not had any Books by me, but only what occurs to my Memory. I cannot be so exact as I ought to be. This *Over-Act* in *Agree* of Treason found by the Jury to be so, I humbly apprehend, and I offer it to your Lordship's Judgment, in Law is no *Over-Act* at all. All the Reason, I shall humbly offer to your Lordship, that tho' it hath been said, that there was a confuting and agreeing in order to levy War, yet it doth not appear that War to be levied was such a War as in the Law is adjudged to be Treason. My Lord, this differs from the levying War itself. An Invasion and Conspiration, or a Conspiracy barely to levy War, which War be levied, it is no Treason. If it be a Conspiration to levy War against the King's Person, to imprison the King, to destroy and murder him, it ever hath been adjudged to be Treason. If it be only a Conspiring to levy War, as if to agree to break open Meeting-Houses, to throw down Houses, was the same as doing of it. There must be a War that is levied, or else it is no Treason. Not only that, but I beg leave to say one Word more. In my Cafe, all the Evidence given in respect of this *Over-Act* in *Agree* is no Foundation for it, and if that is no *Over-Act* in Law, no *Over-Act* elsewhere can affect me. It stands on the Evidence only of Mr. Lynde. He talks of a Declaration. Who read it? The only two Things are, a Discourse between us, and a Declaration which I gave him to read. If that, as I humbly submit it, be an *Over-Act* of Treason, it is carrying the Matter further than it hath been in these few Cases I beg leave to mention that just occur to my Memory. If I state them wrong, I shall be sorry. The Cafe of *Colley* the *Over-Act* Joiner. It was asked the Court, Do you take my Words distinct from any Addition? No, says the Court, we do not do so. You declared you would go down to *Colley*, and assassinate the King's Person. In order to that, you went down with Pillars before you. That at that Time was declared to be an *Over-Act*; the going down to *Colley* in that Manner; and the Court seemed to rely upon it, as the *Over-Act* of the Treason, and not the taking here, or conspiring that he would assassinate the King, but the going down in a hostile Manner. So likewise in the Cafe of my Lord *Proving*, where the Question was, whether those Letters that were found with him in the Ship; whether that was an *Over-Act* of Treason? The Judges formed to be of Opinion, that the taking those Letters with him as he was going to *France*, and there to commit the killing up an Insurrection here, and to murder the *Proving* King, so invade us, was an *Over-Act* of Treason. But there is a stronger Cafe, the Cafe of my Lord *Roff*. He was unjustified, as I am, for compassing and imagining the Death of the King. The *Over-Act* had in the Indictment to manifest that Insurrection, was, that he, with the rest of the Conspirators, conspired to seize upon the King's Guards: In pursuance to that Discourse and Conspiracy which they had had, it appeared that Sir *Thomas Armstrong* was sent to make a View of the Guards in order to carry on the Design. Notwithstanding there was a pursuing of their Design of seizing the King's Guards, in finding Sir *Thomas Armstrong* to view them, yet the Cafe was thought to have been in respect to my Lord *Roff*, that his Attainment was revealed by an Act of Parliament. Therefore I only argue, with great Submission, that in my Cafe, where nothing is done but accidentally calling as at the *Grove* *Moss*, saying a little while there, and, as hath been shown, here was nothing but a mere Discourse, and then I gave him a Declaration to read. If I did so, it was only Words. As to the second, it was nothing but publishing a Libel. And shall that be a Foundation to deprive me of my Life and Estate, as the utter Rancor of myself and Family? It is an unprecedented Thing, hath it ever been? Therefore I hope your Lordship, before you give any Judgment in this Matter, will take it into your Consideration, whether any Thing done in *Agree* doth amount to an *Over-Act* of Treason.

Mr. Hæretic. My Lord, I humbly hope, as it is my Duty to do what I can to my Client, and as it is in Case of Life, that I shall have your Lordship's Indulgence for a few Words. My Lord, he hath justly observed, that

Mr. Serj. Pender. My Lord, I would not interrupt Mr. Lynde, unless it may be supposed he is not to well acquainted with the Method of Proceeding. But I hope I may take the Liberty to interrupt his Counsel, who know by very great Experience the Method of Proceeding, and they are not now to insist on the Nature of the Evidence, whether the Evidence that hath been given is sufficient to maintain the Indictment, it is not the Business of this Day. If they have any thing to offer, Objections to make in Arrêt of Judgment, that is the Business of this Day; but to assign the Proceedings upon the Trial, as it is found the Evidence given did not amount to a Confutation, or to prove an *Over-Act* of the Treason altogether, I don't apprehend it to be proper at this Time: I did not interrupt the Prisoner himself; but I hope his Counsel, who know the Method of Proceeding better, in Cases of High Treason, shall not be permitted to go on in that Manner.

Mr. At. Gen. The Gentlemen that are Counsel for the Prisoner, very well, that the Evidence given on the Trial is not now before your Lordship; the single Question that can now be made is, Whether the Indictment is good, and the Facts charged and found by the Jury, are established, and do amount to sufficient *Over-Acts* of the High Treason, which the Prisoner stands indicted? Mr. Lynde hath been giving an account of the Witnesses, and making Observations on the things which they swore; he was borne with: But the Gentlemen that are his Counsel, seem to be opening in the same Manner, but as to them, we must sit still on it, that they should be confin'd to what is proper, and let themselves to move in Arrêt of Judgment, if they can find any thing on the Face of the Record of which they can take Advantage. But I think they are not entitled to go on with Observations upon the Evidence in this Manner they were beginning.

Mr. Hæretic. I assure your Lordship I did not design it, I did not intend to recapitulate any part of the Evidence, or to observe upon it. And therefore there was no Occasion for the Caution. I thank your Lordship for the Indulgence you give me, and I will conform my self to the Rules the King's Counsel prescribe, to observe upon nothing but the Record.

My Lord, the Indictment is in this Manner; the species of the Treason laid to the Charge of the Prisoner, is the compassing and imagining the Death of the King. The first *Over-Act* of that Treason, is, that he did meet, confute, conspire and agree to raise a Rebellion, and a Gunpowder on the Kingdom, which is an *Over-Act* of compassing and imagining the Death of the King.

I know how the Authorities have been; but in the Cafe of *Leah*, your Lordship will give me leave to observe, that by the Statute of 25 *Edward III.* compassing and imagining the Death of the King—

L. C. J. Mr. Hæretic, we would hear you in any thing that is proper, but consider if you are not offering a matter in Arrêt of Judgment, that hath been determined against you a hundred times. Hath it not been constantly allowed as an *Over-Act* of Treason in compassing and imagining the Death of the King, if the Parties did meet, conspire, and agree to levy War? Hath it not been constantly agreed, and doth it not lie allowed to be so? Now to persuade us at this Time to overthrow those Resolutions taken by our Predecessors, is such a thing as is not right. Do you think we will give a Judgment contrary to what our learned Predecessors have given in Cases of the greatest Moment? If I thought it was of any Effect, I should not grudge spending time to hear you, but I must agree, it hath been over-ruled a hundred times.

Mr. Jull. Esq. It hath been settled a great many times, particularly the Cafe of *Darrel, Gordon and Eor*, in which it was argued over and over again, and the Court was of Opinion that the confuting and agreeing to levy War, was an *Over-Act* of Treason in compassing and imagining the Death of the King, and gave Judgment accordingly.

Mr. Jull. *Forster* *Abbot*, Mr. *Knolly* was Counsel for the Prisoner in that Cafe, which was in this Cause, in the 11<sup>th</sup> Year of this King, when this Objection was made; and very well known, that the Court, upon that Occasion said, that they ought not to have suffered that matter to be made a Question, for that it was assigning the Judgments of very many learned Judges.

Mr. Jull. *Prosser*. No one thing relating to Treason is more fully settled in that Cafe, as hath been mentioned, it was agreed, and it was the Judgment of all the Judges that tried that Cause.

Mr. Hæretic. My Lord, I humbly hope—

Mr. Jull. Esq. It must not be admitted, we must not suffer to slip a Point to be disputed; it is not only unbecoming of time, but shaking what has been established by every Trial, in which any thing of this kind has been mentioned, from the Cafe of the *Regicides* to this Day.

Mr. Jull. *Prosser*. In the Cases of the *Regicides*, their Matters are argued in *Kilgob*.

L. C. J. And in all the Trials ever since, there is scarce any Cafe hath happened, where the Cafe hath been for compassing and imagining the Death of the King, but that it hath been laid for an *Over-Act*, that the Party charged, did conspire and agree to levy War to bring his wicked intentions to Effect.

Mr. Hæretic. There is no Doubt, but that the *Regicides* were the worst and most notorious Criminals that were ever brought before a Court of Justice; and yet there is one Circumstance of those Trials, quoted in the very Book which Mr. Justice *Prosser* mentions, which was never granted before, and I am sure never will be; that is, the Judges who went to try the Criminals, and the King's Counsel who were to prosecute them, met and consulted together to form and fix the Accusations.

But if it is your Lordship's Pleasure, I shall speak no further to that Matter.

L. C. J. You have the Opinion of the Court, and I dare say it is your own Opinion; and as the Resolutions are so positive, it is not for us to make Indulgences at this Day.

Mr. Hæretic. I shall not press it any further. There is another thing arises upon another *Over-Act* laid in the Indictment, that is, *Præfix* *quædam* *Scriptum*, &c. I apprehend the Substances of the *quædam* *Scriptum* ought to be mentioned in the Indictment.

L. C. J. It is intended in Effect, that it was to excite People to a Rebellion and an Insurrection.







was given; and therefore as I never thought it right, I can't hear it urged as an Authority without offering my Reasons to the contrary, and acknowledging that I have been long in a great Mistake, if there be any one Reason in the Books to support it.

Mr. Just. Pease. In the Case of *Francis* it was insisted on in order to stop the Trial; the main of the Objection was, that they sought not to produce Evidence of the Letters, because said Letters were not expressly let forth in the Indictment, and that very Objection was made in order to stop the Trial. What was said there in Cases of Libels is intended when *let forth* is the word, and not in *Latin*, the more common Way; But it is another Thing where it is an Overt-Act of the Imagination of a Man's Heart in Treason, it is sufficient to let forth the Substance of them; therefore it was to be fully settled in *Francis's* Case, that I thought it would be never mentioned again, the Point was argued. The Objections were made and over-ruled, and it was the very Point on which the Trial proceeded.

Mr. At. Gen. In my Lord *Proctor's* Case there were several Notes, Memorandums and Writings, that were the very Overt-Acts of the Treason, yet they were not particularly set forth in the Indictment.

Mr. Ser. Pease. Then it was alledged, that the Lord *Proctor* prepared and composed several Writings, several treasonous Notes and Memorandums, for the giving Instructions and Informations for the French King how to invade England. I desire to put Mr. *Kendry* this Case: Suppose any one had proclaimed the Pretender at *Cherbourg*, or elsewhere, and had sent his Declaration, exhorting the People to revolt and to come in to him, and procuring them Rewards; and then the Declaration had been carried off, or so disposed of that it could not be recovered and produced in Evidence; I would be glad to know, whether that Person might not be indicted for Treason, without setting forth the particular Words which he read out of such Declaration, or whether he should escape Punishment for want of being able to set out the particular Words?

Mr. At. The reading of the Paper in this Case would be sufficient.

L. C. J. Have you done, or have you any thing further to offer for the Prisoner?

Cl. of the Cr. *Christopher Layer*, hold up your Hand. You have been indicted of High-Treason, &c.

Prisoner. I know nothing more to say now, because my Counsel have given it up. But after your Lordship has published Sentences upon me, I hope and desire, for the Sake of other People more than myself, those that I have had very great Dealings and Correspondence with, particularly my Lord *Londonderry*, and several others, that I would do Justice to, that your Lordship would give me a reasonable Time to make up their Accounts; and when that is done, I hope your Lordship will give me still a further Time to make up that great Account which I have in another Place: When that is done, if my Majesty doth not think fit graciously to condone me in this World, I will dare to die like a Gentleman and a Christian, not doubting but that I shall meet with a double Portion of Mercy and Justice in the next World, that 'tis denied me in this.

L. C. J. *Christopher Layer*, You have been indicted, and after long Examination and fair Trial, have been convicted of High-Treason in compassing and imagining the Death of the King.

You have had all the Indulgence and Advantage that the Law would allow to you. You have had Counsel assigned you of your own choosing, to advise you preparatory to your Trial, and to assist you in making your Defence at your Trial.

These Counsel have been permitted to say whatever they thought proper for your Service; and I heartily wish that I could say that they had not exceeded, that they had not taken a greater Liberty than they ought to have done: But however that be, this Court thought fit to permit it, as being, that they might not be discouraged in offering any thing that was proper for your Defence; we did not conclude it then, on this Consideration.

The Jury that have found you guilty, are such, as may be justly said, you yourself approved of; for the Law gives you a Liberty of challenging five-and-thirty, you challenged but four-and-thirty; so you allowed the rest to be an indifferent Jury, to pass between the King and you as to your Life and Death.

The Evidence on which you have been convicted, is the clearest and plainest that ever I heard. Your personal Conversations with the Pretender at *Rouen*, your constant Correspondence with him and his Agents afterwards, the Scheme that was formed for the Executing this Treason; your Confession of the greatest Part of it before the Lords of the Council; and at last your Flight when in the Hands of Justice, out of a Window two Paces of Stairs, and the Endeavours you used when retaken to corrupt and prevail with those that took you, by Rewards, to let you go off; these are Matters so very clear and plain, and did concur so exactly with the Evidence of the Witnesses, that it did not rest on their Oaths; the only Question was, Whether the Jury did believe what you yourself had declared on your Examination before the Lords of the Council, and by the Scheme that was found in your Cellary?

This being the Nature of the Evidence, I trust, according to what is usual, put you in mind of the horrid Wickedness you have been found guilty of.

The first Matter proposed to be done, was to seize the Tower of *London*, to set a Guard at the *Exchange* and other Places, to force the Bank, and take from thence what Money you had Occasion for; by which the whole City of *London*, and in consequence the whole Nation, would inevitably have been involved in Blood and Confusion; This was to have been the first Fruits of your projected Scheme.

The next Step to be taken by this execrable Scheme, was to force the sacred Person of the King; a King, who during the whole Course of his Reign hath been the most religious Observer of our Laws, the most careful Protector and Prince of all our Civil and Religious Rights, and the most merciful Prince that ever sat on the Throne of these Kingdoms; yet this, this most excellent Prince, was to be seized and made a Sacrifice to Popery and arbitrary Power.

The next Step to be taken, was to seize the Prince; and when that was done, Nobody can doubt but the young Prince and Princess must and should have followed the Fate of their Father: So that the Project must and would have ended in the Destruction of all the Royal Family

on this Side the Water; and when that was done, 'twas thought 'twould be an easy Matter to set the Pretender on the Throne.

This being done, the King, and the Royal Family destroyed, and the Pretender advanced to the Throne; what the Consequence of that must and would have been, is obvious to every body, it must have ended in the entire Destruction and Dissolution of our most happy Establishments and Constitutions; the happy, I think, that every one People call it must have ended in our Destruction of our Laws, our Liberties, our Religion, and the Church of *England* as by Law established; and we have become, from the most happy, the most miserable People on Earth.

These horrid and execrable Designs are to very few Men in their Hearts, they hardly will admit of any Circumstance of Aggravation; must say, I don't avoid saying, that there are Circumstances which add to you, that make them more heinous, if possible. You were bound to the Law, and you must be supposed to know the Expediency of a happy Constitution and Government, and the Laws which you professed which make your Crime much the greater.

Another Matter, which is a great Aggravation of your Offence, is, that you were, or at least professed yourself a Protestant, and a Member of the Church of *England*, whilst you engaged yourself in a Design which must inevitably have destroyed that Church which you professed to be a Member of.

These are the Treasons which you are convicted of; and being found guilty by the Law, you are not fit to live; and the Judgment of the Law is, that it is confirmed by the Court, that

You *Christopher Layer*, be led to the Place from whence you are to die, and from thence you are to be drawn to the Place of Execution, and you are to be hanged by the Neck, but not till you are dead, not you are to be drawn alive, and your Brains to be taken out, and buried before Face; your Head is to be severed from your Body, and your Body to be divided into four Quarters, and that your Head and Quarters be displayed where his Majesty shall think fit.

Then the Prisoner was carried back to the Tower of *London*, but on Wednesday November 25. the Attorney and Solicitor General moved for a Rule for his Execution, and that the Court would appoint a Time and Place for that Purpose; and said, that the chief Design of executing such Criminals was to be an Example to others not to offend in the same Manner, and to deter them from committing Treason; and therefore they conceived that the Execution might be in *Ad-locum* though the Fall was done in *Edin*, and said, that there were many Precedents in executing Criminals in such Places as this Court should think proper.

Thereupon the Court asked the Clerk of the Crown if he knew of such Precedents, who replied, that one *Fitzpatrick*, who was an Abbot with the Lord *Swydder*, was executed in *Ad-locum* for a Fall committed a *Widow*, and two other late Presidents of the same Nature.

So a Rule was made to the Lieutenant of the Tower, to deliver the Prisoner to the Sheriffs of *London* and *Middlesex*, and another Rule to the Sheriff of *London* to execute him on Monday December the 14th, at *Tyburn*.

Then the King's Council moved the Court to alter the Rule made the Day before, for Mr. *Mc-yeen*, the Clergyman, to attend the Prisoner, in that he was taken into Custody upon Suspicion of Treason, and had given Allow to appear in Court this Day.

The Court answered, That any Clergyman should be admitted to see Prisoner, who was a Person of known Fidelity, Integrity, and Loyalty, but not such who might harden him in his Iniquity as his last Liberty; so two more Clergymen were joined in the Rule, and the case two Roke out.

Afterwards, and on that very Day before he was to be executed, he had a Reprieve, and a Rule was made to the Sheriffs, that he should not be executed by Virtue of any Warrant signed by the King, but that a new Rule must be made to the Court of *King's Bench* for an Execution. He was accordingly brought to the Bar in *Halby-Town* following, and a Rule was made for his Execution on the 27th of *March*, but before that Time he procured another Reprieve, and afterwards another Rule was made to execute him on the 17th Day of *May* following, which was done accordingly. He made a short Speech to the Assembly, wherein he avowed the Principles for which he suffered, recommended the Justice of the Pretender, and delivered a Paper to the Under-Sheriff, and also another to a Friend of his. His Head was set on a pole as earned to *Norwich*, and was the next Day, set upon *Tomb*-*Row*; but his Quarters were delivered to his Friends, who took care to get them decently interred. The Paper above mentioned was inclosed in a Cover, signed thus,

To Mr. Walter Price, Under-Sheriff, at his House in Castle-Yard, in *Holborn*; And was as follows, viz.

MR. SHERIFF,

I Having previously resolved to employ all the Time allowed me at the Place of Execution, in Devotion, and making my Peace with God, that the *Att-Sheriff* Mr. Price, and Ministers of my Gracious Majesty, I have, instead of any Speech I could be to the Spectators, on this unfortunate Occasion, consumed my last Thoughts of all worldly Affairs to Writing a, while I have some Intervals of Time for so doing, and have got two Authentic Duplicates thereof, with my Hand subscribed the Bottom of each Side, to two truly Friends, to deliver thereby to the World, in due Time, and as Occasion offers, the True Principles of both my Religion and *Polity*, as well as the manner of my Death and last Will. I have lately met with, one which I pray God forgive the Authors of, and to the End, that none of my Friends, who had Access to me, I was persuaded to do, may be liable to come into any Fracas with the Score of publishing my said Writings, I sent the *Diagnosis*, &c. &c. up, together with Duplicates of two several Letters directed to a man the most in the *Abominations*, to one of my Friends above-mentioned, desiring him to copy them all over fair, and return them to me. And then I subscribed them, and returned them to my Friends, without telling the Bearers, Leave or Lash, know any thing of the Contents.

So, taking Leave of this vain World, God be Mercy, Receive of Soul! Amen.

Christopher Layer.



CXIV. Proceedings in Parliament against John Plunkett, George Kelly alias Johnson, and Dr. Francis Atterbury, Bishop of Rochester, upon Bills of Pains and Penalties for a Treasonable Conspiracy, May 1723. 9 Geo. I.

THE above-named Persons having been taken into Custody by Order of the Government, for a treasonable Conspiracy, it was thought proper to lay the Letters, Papers, and Examinations relating thereto before the Parliament, whereupon the House of Commons appointed a Committee, Jan. 15. consisting of the following Persons:

The Right Honourable Spencer Compton Esq. Speaker.  
Robert A. A. Esq. Chancellor of the Exchequer.  
Sir John Yorke, Master of the Rolls.  
Sir Andrew Boscawen Esq. Comptroller of his Majesty's Household.  
William Pastley Esq.  
John Smith Esq.  
Richard Hampden Esq.  
Lieutenant General Wills.  
Sir Robert Sutton.

The Committee chose William Pastley Esq. their Chairman, and made their Report to the House, March 1. which was as follows:

THE Committee appointed to examine Christopher Layer and others, in relation to the Conspiracy mentioned in His Majesty's Speech, to be carrying on against his Person and Government, having perused the several Papers and Examinations referred to them, and having gone through the Examination of these Persons, have agreed on the following Report:

In such various and so long Examinations, and in so extensive an Inquiry, your Committee are in Hopes that they need not be strictly tied to the Method and Order in which they were appointed, but may, for the sake of the House, range the several Matters occurring to them, as near they can, in the Order of Time in which they were transacted, or as they best serve by their mutual Connection to illustrate each other, without adding any Observation of their own, but such as naturally arise in comparing the several Papers and Examinations together, and such as are necessary to help the House the more easily to perceive the Contradictions and Inconsistencies of the Confessions made by the Prisoners, as well as the Confirmations and Coincidence of the Facts implied inns.

The Committee observe in general, That a Design has long been carrying on by Persons of Figure and Distinction at home, in Conjunction with Treasoners abroad, for placing the Pretender on the Throne of these Kingdoms. That various Methods have been attempted, and various Times fixed for putting this Design in Execution. That the first Intention was to have procured a regular Body of foreign Forces to invade these Kingdoms at the Time of the late Elections; but that the Conspirators being disappointed in this Expedition, next resolved to make an Attempt at the Time that it was generally believed His Majesty intended to go to Hanover; by the Help of such Officers and Soldiers as could pass into England undisturbed from abroad, under the Command of the late Duke of Ormonde, who was to have landed in the River with a great Quantity of Arms, provided in Spain for that Purpose; at which Time the Duke was likewise to have been seized, and the City of London to have been made a Place of Arms: but this Design being also disappointed, by the Discoveries made in England, and his Majesty's putting off his Journey by the Incapacity of his Forces at home, as well as the sending for those from abroad; and by the Readiness of his Majesty's good Allies the States General to assist him in Case of Need; by the Orders being in Spain, that the late Duke of Ormonde should not be suffered to embark, and the like Orders issued in France, that he should not be suffered to pass through that Kingdom; the Conspirators found themselves under a Necessity of deferring their Enterprise till the breaking up of the Campaign during which Interval they were labouring by their Agents and Emisaries to corrupt and seduce the Officers and Soldiers of His Majesty's Army, and depended to much on this Defection, as to entertain Hopes of placing the Pretender on the Throne, though they should obtain no Assistance from abroad, which nevertheless they still continued to collect for.

The Truth and Reality of these wicked Designs, your Committee are of Opinion will appear confirmed to the House by concurrence and unanswerable Advices from almost all Parts of Europe, first by Persons who appear to have had no Communication with each other, which Advices have again been verified and supported by several Discoveries made at home, by the Informations and Confessions of some of the Persons concerned, as well as by a long and regular Series of Correspondence, which the Conspirators have furnished the Government with against themselves, and the several Brothers of which appear to the Committee concerted with one another, and all concerning in one continued Design of subverting our present happy Establishment, and involving these Kingdoms in Blood and Confusion.

The several Examinations, Letters, and other Papers, are all contained in (a) Appendix to this Report; and as they are all severally answered, in the several Paragraphs which are quoted from them have References to those Numbers, that they may the easier be turned to upon Occasion, and be supported by the Authorities from whence they are taken. That the first Design was to have been executed during the Elections, and to have been supported by foreign Forces, is collected from the following Circumstances:

Philip Noyes Clerk (who was deposed in attempting to make his Escape from the Messenger) declared upon his (b) Examination before

some of the Lords of the Council, ' That he had been employed by George Kelly, and one Wajon, whom he took to be the late Earl Mar- ' shall, and who was in England last Spring, to draw up three several ' Memorials to the Regent of France, to induce him to send Forces to ' the Assistance of the Conspirators. That the bulk of these Memorials ' was drawn up in December 1721, and contained a Demand of Five thou- ' sand Men, to be sent over by the Regent to invade these King- ' doms.'

This is confirmed by unquestionable (c) Advices from France, the 20th of April last, in which it is expressly affirmed, ' That repeated Ap- ' plications had been made to the Regent for some Time past, to furnish ' only a Body of Three thousand Men, by the help of which the Con- ' spirators made no Doubt but to be able to place the Pretender on the ' Throne.'

Layer at his (d) Examination before a Committee of Lords of the Council, confessed, ' That being in Discretion with Lord Ormy, soon ' after his first Acquaintance with him, (which was before the Intem- ' perate) Lord Ormy said, Nothing could relieve the Nation, but a Re- ' formation; and that he would be glad if he could contribute to bring ' it about: That it must be done by foreign Forces, and could be done ' no other Way. That he often asked Lord Ormy, what Methods they ' had taken to procure them? ' That Lord Ormy said, They had Friends ' abroad that had made Application to the Regent for Assistance to bring about ' a Revolution; but he does not know when his Lordship meant, Geor- ' metal Dabois might be his Correspondent for aught he knew. That Lord ' Ormy likewise told him, the Regent might be brought to send us our ' Thing, but was so perfidious that he was not to be trusted; and that the ' French had made Tools of the Pretender.'

Layer repeated the same in part, at two other (e) Examinations before his Trial, and has since confirmed to your Committee, upon his (f) Ex- ' amination at the Tower, ' That Lord Ormy delivered himself confidently ' of Opinion, that nothing could be done to any Purpose in the Preten- ' der's Favour, without foreign Forces.'

About the latter End of April, a (g) Letter was intercepted here, con- ' taining some Part of the (h) Copy of one from O — to L — — —, which would be the Sense of this Report, it has been from the late Duke of Ormonde; in which Ormonde says, ' I beg to tell Mrs. Chancelor ' that since the Parliament is dead and gone, I think it is a good Time to ' make an Effort, where the Elector is gone to Hanover.' It will appear from the Sequel of this Report, that Mrs. Chancelor is probably meant the Pretender.

On the 23d of April (i) another Letter was intercepted, signed 1687, and directed to Mr. Jackson, which your Committee have good Reason to believe was from the Secretary of Rochefort to the Pretender, as will be shown in the following Part of this Report. In this Letter he says, ' Notwithstanding this Opportunity is elapsed, I agree with you another ' may offer before the End of the Year, though not perhaps every Way ' so favourable.' ' His Letter was writ on the 20th of April, when most of the Elections were over, and consequently that Opportunity was elapsed.

That an Intention was thought of at the Time of the Elections, is further confirmed from the following Particulars: Layer (k) confessed before the Lords, ' that Gross the Gunsmith being in Company with ' Lord Northampton Dymmer, and talking of five thousand Arms, and seven ' thousand Arms that were ready, said, When the Northampton said were ' up, if they had had Arms Upon which Lord Northampton interrupted him ' and said, Don't talk, you are a Colonel, you know them to be Arms; ' but that the Lord insisted there were five thousand Arms ready in the ' City.'

Noyes (l) declared, ' that Tbe. Genter, Clerk, made two Expeditions in ' the Spring (during the Elections) one into Cornwall, and another into ' the Counties of W' reick, Northampton, Derby and Stafford; and that upon ' Noyes's Blaming the riotous Conduct at the Cornbury Election, Genter ' replied, Hang the Elections, you never saw Fellows of such Mettle, so ' well trained, so to be for Battels.'

Answer Mr. Deane Kelly's Papers were seized an exact (m) List of the Quarters of all his Majesty's Forces at Great Brittain, about the Time that they were drawn out of most of the great Towns and Boroughs, on Account of the Elections.

From all these Circumstances the Committee for Reason to conclude, that the first Design was to have been executed with the Assistance of foreign Forces, at the Time of the Elections; that the Pretender, the late Duke of Ormonde, Lord Ormy, and the Bishop of Rochefort were of this Opinion; that Memorials were drawn up here, to be presented to the Regent by the Persons; and that those Memorials were actually pre- ' sented, or at least Application made to the Regent in Consequence of them, by Directions from Persons in England; and that such Dispositions had been made for this Enterprise at that Time, as looks out into Riots at some of the Elections: which must be allowed to have been no un- ' reasonable Judgment for such an Attempt, considering the Discontents ex- ' cited by the late Duke of Ormonde, which the Conspirators have all along flattered themselves they should be able to improve into a Spirit of Rebellion; and the Liberties usually taken at such a Season, when all the Freeholders of England are necessarily and legally assembled together, and when the whole Nation is too apt to be in a Ferment, even in the quietest Times.

This Design failing, on Account (as 'tis reasonable to believe) of the Conspirators not being able to obtain the Forces they solicited from abroad,

(a) The Appendix consists of twelve Sections, marked A. A. B. B. C. D. E. F. G. H. I. K. (b) E. 20. (c) A. 11. (d) E. 11. (e) T. 10. (f) E. 20. (g) A. 4. (h) B. 11. (i) B. 11. (j) E. 20. (k) E. 9. (l) T. 10. (m) T. 10.



and of their being themselves decided in Opinion as to the Time and Manner of Execution, their most Excellent was to attempt an Intercession at the Time when they supposed his Majesty would be going to Hampton.

Of the Reality of this Design your Committee have found such evidence and concurrent Testimonies, that they think it would be quite unreasonable to be sceptical, in an Affair where it was so much the Interest of the Conspirators to act with the utmost Secrecy and Mystery.

It has already been observed, that the late Duke of Ormond (a) thought the Time of the King's going for Germany a favourable Opportunity for making an Effort, and that the Pret- who from 1738 (b), says, 'Notwithstanding this Opportunity is elapsed, I agree with you another may offer before the End of the Year, though not perhaps every way so favourable.'

Lays conferred to the Lords at (c) two several Exam- nations previous to his Trial, and his face (d) confirmed on your Committee, 'That he made Application to Lord Grey to hand God-father to his Child for the Pretence, intended that the Mark of Kindness from the Pretender should serve as a Credential to Lord Grey to induce him to converse freely with him, in relation to the Pretender's Affairs: That this Acquaintance having begun in this Manner (e), Lord Grey sent to him to enquire into the Pret-der's Character and Qualifications, and asked him several Times, whether he had any Recommendations from the Pretender to any Person? That upon his answering No, his Lordship told him, that he desired to be an honest Man, and People of his Integrity should be always welcome to him, whether they had any Credentials or no: That he, Lays, then gave his Lordship an Account of what had passed between the Pretender and him during his Stay at Rome, and asked his Lordship what Hopes there were? To which his Lordship answered, 'That there were Hopes, for all the Nations were generally for the Pretender, except such as had Places, or Money due to them from the Government. That Lord Grey further told him, That Lord North, Sir Henry Goring, Lord Searford and others were going to do a rash Thing in Favour of the Pretender, which he, Lord Grey, was very far from, because it would prove dangerous, and hinder its succeeding another Time: That Lays told him, Who was to have the Command? And Lord Grey told him, as he believed Lord North and Grey was to have the Command, and that the late Lord had a Commission from the Pretender, that the Lord Grey called this Design rash, because not duly considered, nor supported by proper Forces, without which, he said, he thought they must be more than Matched to hope to do any Thing so bold for the Pretender's Service. That he, Lays, the next Time he saw Lord North and Grey, which was before the Encampment of the Troops, acquainted him with what Lord Grey had said about the Rashness of the Design; that Lord North and Grey replied, Lord Grey was a timorous Fellow, and was always making Difficulties, and 'Schemes out of his own Brain; that he knew nothing, nor should know; but that it was his [Lord North's] Opinion, the Pretender might be refused by the People of England, without the Assistance of any foreign Force. That he, Lays, talked to Lord North and Grey of his Lordship's being General, but that Lord North said, he was not popular enough, that the Duke of Ormond would be fit for it, and, as if they had him here, his Lordship believed most of the Soldiers would join him: That he, Lays, continued to press Lord North and Grey on this Head, by telling him, that he was fitter for a General, and was popular; that he said Lord Ormond, now the Duke of Ormond was in Spain, he was the Soldier's Darling. That he, Lays, when talked of this Affair to the late Lord North, being induced to do so, by the Impudence he observed in him, and in Lord Grey, in something thus: 'be done.'

Another Pleader, denigat a French, has (f) deposited upon Oath, That Lays did say (in July last) that the Duke of Ormond would come in a single Ship with four Officers, and that it had been done long ago, if the French Ambassador had not been told of it, who told it again to the King.

(g) It appears to your Committee from several Depositions on Oath, as well as from Informations and written Intelligence, that the consequence of this Design of bringing near the late Duke of Ormond, Captain Charles Haydock, a Leeward Man (who was concerned in the Informations laid at Oxford in the Year 1735), to sail from the River for Bilbao, about the 12th Day of March 1735, on board the Ship Phoenix of Bristol, William Arnold, Master, with a Provision of Arms and Powder on board, which one of the Sailors on his (h) Examination declared, 'He apprehends to have been greater than was necessary for an ordinary merchant Vessel. (i) That the said Ship was hired at one Hundred Pounds Freight per Month, two Hundred being paid in Advance (in Haydock's own Words), and had no Goods or ordinary Passengers on board, except the said Haydock, who was by the Name of Arnold, and was known to the Master and Sailors by that Name only, during the Voyage to Spain.

(j) That the said Ship was cleared at the Custom-house in Hallifax for Laidy, but that when they came into the Bay of Biscay, the Master, who had orders to follow Lord North's Directions (k), gave private Instructions to the Pilot to steer to Bilbao; that they arrived there on the 25th of March, O. S. and that Haydock went on Shore, and lay that Night at Mr. Brown's, in St. Michael's, and the next Day went forward towards Madrid, being furnished with Hints by the said Brown, on which Journey he was absent about a Fortnight, the day after his Absence, a (l) Report was current all over the Town of Bilbao, and particularly among the Citizens, that the said Ship was come to fetch out the Duke of Ormond. And Thomas Carter, one of the Sailors of the said Ship, who was employed by Haydock to wait on him at a Sergeant, has (m) deposited upon Oath, 'That three Days after the said N. S. Return, the Disposition heard him propose to go to the above-named Captain Arnold to carry the late Duke of Ormond and four other Passengers to England, where the said Captain Arnold relating to us, the said

the said N. S. testified, saying, the said N. S. was his long time past at the Bay of Biscay, and the Wages and Victuals, and they had had a great deal of money. (n) Lays further deposed, That Haydock received a Letter from the Duke of Ormond, which was the Name the said Duke of Ormond, wrote him, when he was in Spain. That when the N. S. was released, they sailed off on about four Hours off St. Andrew, expecting some Boat to come off in a Boat, but Nobody coming, and Night falling on, they made the best of their Way to England, and arrived in the D. W. at the Beginning of July last. Arnold, who came over on England, was (o) in the said Ship, but (p) passed upon Oath, 'That he left the Duke of Ormond on the 4th of June, N. S. and that from that time he came away, and the late Duke of Ormond, who had resided a considerable Time at Madrid, had left away his Hints and Equipage from thence, and put his Servants on Board-wages, and that it was reported he was to go to Portugal. That he, Lays, upon his coming to Bilbao, heard the Duke of Ormond bound for England, but that he agreed to take his (q) own boat here and going to the Corregidor of Bilbao for a Pass, he found that Mr. Brown, a Merchant, and one who went by the Name of Arnold, that Brown asked the Corregidor why the Ship was bound for England, it was not the Ship, but Arnold's Person that was desirous of going. Orders from Madrid, that he, Lays, heard a Report at Bilbao, that the late Duke of Ormond was on the Coast in disguise, and even Arnold had been at Madrid, and come back again in fifteen Days; the Expectation of which Journey, and the Ship's coming in Hallifax, had led to a Suspicion in Bilbao, that Arnold came over to the late Duke of Ormond, on Account of the Conspiracy. The 8th of June (r) followed, the said Duke of Ormond staying at Bilbao, Sir Henry Goring's Person concerned in the Plot (s) Relations) was frequently on board with him, and (t) came to see his Name. The last Particulars are confirmed by (u) Letters from Sir Arthur Mordaunt, who was first to Spain to give Intelligence, with several other (v) Characters relating to Ships, Arms and Return, provided for the Pretender's Service in Spain.

During these Transactions (w), Colonel Skelton, his Majesty's Ambassador at Madrid, who does not appear to have known any thing of the Ship's being come to Bilbao, having received Intelligence from other Hands, that the Duke of Ormond was preparing to set out for England with some Irish Officers, in order to put himself at the Head of the Rebels, obtained Orders from the Court of Madrid, to hinder the late Duke of Ormond's Embarkation, as well appear more fully in the remaining Part of this Report.

In consequence of these Orders, the King of Spain's Officers (x) came on board the Ship, and laid an Embargo upon her for about a Fortnight, till Haydock, finding himself disappointed of his Design, agreed that Part of a Cargo of Wool and Iron should be put on board the said Ship by Brown and Goring; and then returned to (y) England with one Arnold, whom the Sailors understood to be a Relation of the late Lord North, and two other Passengers, and arrived in the River about the 25th of July last.

About the Beginning of May, a (z) Letter was intercepted here, coming from Spain, directed to M<sup>rs</sup>. Damsell's Providence, and enclosed under to one W. Damsell, at Mr. Stude's Bookseller near Charing-Cross, Who is meant by the Name Damsell, the Committee have not been able to discover.

In this Letter was inclosed the (a) Copy of a Letter, which the Committee have Reason to believe was from the late Duke of Ormond to some Persons abroad, the actual Letters of whose Names is discovered by the Depositions to be.

The Letter in Damsell's, as well as the Copy of the late Duke of Ormond's Letter, was writ partly in Cypher; and among the Words used by the several Relations Names were made Use of, with the Committee observe in the Case also in several others of the intercepted Letters referred to them.

It was reasonable to expect, that in managing Correspondences of this kind a Nature, all sort of Art and Industry should be used, and all the Help of Cyphers and Jargon called in, to disguise the real Design, and to conceal the true Names of the Persons concerned, in order to avoid the Danger of legal Conviction; but your Committee have observed, that several of these Disguises are so gross and obvious, that they only serve to betray themselves; others of them are explained by the Skill of different Deyshippers, agreeing in the same Explanation; which Explanation is again confirmed by Facts unknown to those Persons at the Time of the deciphering. Others are explained by Cyphers and Lists of false Names, drawn on the Conspirators themselves, as well as by comparing the several Parts of these Correspondences together, and what again by direct Informations upon Oath. And, as the Degrees of Intimacy, as a branch of this Nature, must be various, the Committee have taken all the Care they can to distinguish what appears to them fully proved, from what is supported by strong and probable Conjecture only.

In this (a) Letter to Damsell, dated the 25th of April 1735, (N. S.) Mention is made of an being publicly known in Spain, by Letters from Bilbao and other Parts, 'That a Ship came to Bilbao, with the Duke of Ormond, in order to being Ormond to England, that the said Ship went to the Place where Ormond was, that this was to be made known, that it was needless to send to England with all possible Dispatch, that a Ship's coming with itself only gave Occasion to such a Report, and that in order to hide them it was necessary to put in the Ship's Letters for England, that this would be a considerable Expence on Time, and hopes that French will consider it, and find him it possible a great Supply than the Five Thousand Pounds that he wrote me in his (b) 4th and 20th of April, that the little must be sent directly to London, and may be bought at the Exchange of London.'

The Committee are of Opinion, that by B is meant Brown, the Irish Merchant at Bilbao, because the (c) Cargo was put on board by the

(a) AA. 5. (b) D. 12. (c) D. 12. (d) D. 12. (e) D. 12. (f) D. 12. (g) D. 12. (h) D. 12. (i) D. 12. (j) D. 12. (k) D. 12. (l) D. 12. (m) D. 12. (n) D. 12. (o) D. 12. (p) D. 12. (q) D. 12. (r) D. 12. (s) D. 12. (t) D. 12. (u) D. 12. (v) D. 12. (w) D. 12. (x) D. 12. (y) D. 12. (z) D. 12. (aa) D. 12. (ab) D. 12. (ac) D. 12. (ad) D. 12. (ae) D. 12. (af) D. 12. (ag) D. 12. (ah) D. 12. (ai) D. 12. (aj) D. 12. (ak) D. 12. (al) D. 12. (am) D. 12. (an) D. 12. (ao) D. 12. (ap) D. 12. (aq) D. 12. (ar) D. 12. (as) D. 12. (at) D. 12. (au) D. 12. (av) D. 12. (aw) D. 12. (ax) D. 12. (ay) D. 12. (az) D. 12. (ba) D. 12. (bb) D. 12. (bc) D. 12. (bd) D. 12. (be) D. 12. (bf) D. 12. (bg) D. 12. (bh) D. 12. (bi) D. 12. (bj) D. 12. (bk) D. 12. (bl) D. 12. (bm) D. 12. (bn) D. 12. (bo) D. 12. (bp) D. 12. (bq) D. 12. (br) D. 12. (bs) D. 12. (bt) D. 12. (bu) D. 12. (bv) D. 12. (bw) D. 12. (bx) D. 12. (by) D. 12. (bz) D. 12. (ca) D. 12. (cb) D. 12. (cc) D. 12. (cd) D. 12. (ce) D. 12. (cf) D. 12. (cg) D. 12. 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and *Singer*; and it appears by subsequent (a) Letters that this had twelve Thousand Armes in his Custody for the Service of the Duke of Ormond. It is also proved (b) by the Sailors, that *Haydon* was frequently in Company with this *Armes* and his Nephews, and lay concealed in his House.

Who is meant by *James* in the said Letter, the Committee will not take upon them to determine; but they believe it will appear probable to the Publick that *Ormond*.

The Person that writes this (.) Letter to *Danville*, adds, 'That since *Ormond* cannot meet *Ormond* at any Place on the Road, it is absolutely necessary that *Ormond* should have a good Preparation of Arms as he has had there, and in order to make it, he will wait more Money from Friends.'

The same Person says, that he had that Day received a Letter, importing, 'That *Ormond* should get more Arms if he had more Money.' The same Person is of Opinion, that by *Ormond* is meant *Ormond*, who is named in several (a) Letters from Spain, as Lieutenant of the Pretender's Ships at Cadix, and active in procuring Officers and Arms, which Letters are confirmed by the Seizure of the Ship *Revolution* at Genoa, of which it appears by Captain *Saunders* (s) Letter from Genoa, that *Ormond* was the chief Cause, going by the Name of *Widow*, which is again confirmed by (f) Letter from Sir *Anthony Wilmot* at Bilbao.

The Person that (g) writes to *Danville*, further adds, 'That *Ormond* is a Person beginning with G. are constantly defamed by *Wilmot*, who maliciously to *Ormond*, for *Ormond* upon the Hope of it, has sent *Ormond* M—; he desires *Danville* to mend this, and not to let a Mockery be made of it.'

Who are meant by *Ormond* and *Widow*, the Committee cannot determine, but they are inclined to believe, that they are the same Persons, who are another (h) Letter, enclosed to *Wilmot* soon after, and writ in the same Cypher, are found by the Decipherers to have the initial Letters of their Names *Ormond* and *N—*, in which Consistent they are the same Person, by (i) a Cypher found on *John Phellett*, in which the Name beginning with G. are constantly defamed by *Wilmot*, who maliciously to *Ormond*, for *Ormond* upon the Hope of it, has sent *Ormond* M—; he desires *Danville* to mend this, and not to let a Mockery be made of it.'

The (j) Letter to *Danville* above-mentioned, was enclosed the (k) Copy of a Letter from the late Duke of Ormond to L. which was first to *Danville* as being in part an Answer to one received from him; who is by (l) the Committee cannot determine.

In this Letter, the late Duke of Ormond mentions his having received account from D— (General *Dalrymple* probably), that he had procured a Thousand Armes, and advises the passing Success with D— since in such a Case there was many Armes; and says he can supply depend on two Thousand Armes from M— (*Ormond* probably), but that he could have had more Armes, if he had had more Money.

The Committee observe, That this Account of ten Thousand Armes procured by D—, and of two Thousand by M—, agrees exactly with (m) Account first soon after from Mr. *Swanby* at Madrid, and confirmed by Sir *Anthony Wilmot*, that twelve Thousand Armes were landed in the Hands of *Brown* at Bilbao, for the Pretender's Service; and *Ormond* was ordered to the Bay of *Byron*, in order to transport the late Duke to England.

The Committee take Notice likewise, that the very same Number of Armes is mentioned in a (n) Letter, sent, as they have good Reason to believe, by *George Kelly*, to General *Dillon's* Secretary; and the Armes are there spoken of, as procured by *Ormond's* Relations, which Name *George Kelly* (o) explained to *Nogues* to mean the late Duke of Ormond.

The Circumstance of *Kelly's* mentioning these Armes to *Dillon's* Secretary, makes it probable, that by D. in *Ormond's* Letter, it means the said *Dillon*, who, as your Committee are informed, is an Irish Roman Catholic, and settled Ireland on the Capitulacion of *Limerick*, and is at present Lieutenant-General in the French Service, and has the Command of one of the Irish Regiments in *France*; and says he appears to your Committee, as the best Part of the Intimate Correspondence, to have the Management of the Pretender's Affairs, and to be the principal Agent and Director in carrying on this Conspiracy.

As in his (p) Letter to L— afterwards says, 'That since the Pretender is dead and gone, he thinks it will be a good Time to make an Effort when the Elector is gone to *Hanover*;' and adds, I hope you are agreed with D— the Time of going for England, and when that shall be between Mrs. *Chambers* and D—, you will let *Ormond* know the Place of landing in England. I desire an Express may be sent to you, with particular Account of what is agreed on.' This, the Committee take Notice, agrees with Mr. *Swanby's* (r) Intelligence, that *Ormond* was going for England, and likewise with (s) Intelligence from Madrid, that the Pretender was to embark, as soon as two Officers, Relations of the late Duke of Ormond, should arrive at *Porto Leger*; which Intelligence makes it not improbable, that by Mrs. *Chambers* may be the Pretender.

The same (t) Letter to L—, *Ormond* says, 'I have ordered M—'s (u) that I depend on, as soon as returned to England, it was not proper to use of it, for Reasons not necessary to trouble you with. There is nothing sent by him, because of the Uncertainty of the Time as to getting to England.'

The same Person, the Committee are of Opinion, evidently relates to the Ship. Upon mentioning his sending back this Ship, he imports, 'I have ordered M—'s Ship to come to A—', which agrees exactly with Mr. *Swanby's* (v) Account, that *Ormond's* Ship was ordered to the Bay of *Byron*, in transport to England the Armes above-mentioned, together with *Ormond*, and what Officers could be got, and

it appears by subsequent (a) Letters from Sir *Anthony Wilmot* at Bilbao, that the said Ship, under the Command of *Ormond*, did put in at *Seville* and *Andra*, which the Committee understood to be the Place meant by A—, in which *Ormond* says he had ordered M—'s Ship to come. The said Ship having put in at *Andra*, and held there fifteen Days, is again confirmed by (b) Letter from Genoa, writ by Captain *Gardner*, who commanded the Ship *Revolution* lately taken.

Soon after this Letter to *Danville* (c), another was intercepted here coming from Spain, directed to *Wilmot* D—, not signed, enclosed under Cover to *Wilmot* as the former, and writ in the same Cypher; the most material Paragraph of which is thus explained by the Decipherers.

I shall again entreat you to ask your utmost Endeavour, to get the five Thousand Pounds from Friends returned to O— directly; the Hopes given by O— to excite a great Sum, and by N—, that he had raised twenty Thousand Pounds, ordered O— to supply M—, and to make other necessary Provisions. If that Money be not returned, it will fall heavy upon O—, and he will be disabled from answering the Expectation of Friends, therefore ought to be your first and greatest Concern. All other Affairs are Trifles in Comparison of it; for the Hopes of Success depend principally on O—. I mentioned this in former Letters, and Friends are desired to return more than five Thousand Pounds, if possible. If they do, more Arms and Ammunition, and Officers can be had here; and the End of raising Money by Friends, is to procure Arms, Ammunition and Officers.

To whom these Letters were writ does not appear, but the Committee observe that they are writ in the same Cypher with these (a) Letters, which they have Grounds to believe were from the Bishop of *Baylen*. They observe likewise that the same Cypher is sometimes made use of by (b) *George Kelly*.

Mr. *Stokes* the Bookbinder being examined about *Wilmot*, under whose Cover these Letters to *Danville* and *Danville* were enclosed, could give no other (a) Account of him, but that he was one who once writ a Letter in his Shop, and desired him by a Letter, dated *Spain* the first of March, 1723, to take in for French Letters to himself come directed to him; and by another Letter, dated *Hanover* the 12th of May, desired him to take in no more; that he, *Stokes*, did receive two Letters from abroad to directed, which were fetched away, and paid for by Persons to him unknown.

That the late Duke of Ormond was expected to head an Insurrection in England, is further confirmed by the following Particulars:

*Nogues*, upon his Examination before a Committee of Lords of the Council, (a) declared, 'That the first Design in the Spring was to have been executed in London by forcing the Tower, and that the late Duke of Ormond was then to have landed in the River; but upon Discovery of the Plot, and the King's not going beyond Sea, it was put off for some Time; that the Bishop of *Baylen*, Lord *Orrey*, Lord *North*, and Sir *Harry Garay*, were the principal Leaders and Directors of the whole Design; and that *Wilmot* (whom he took to be the late Earl *Marshall*) had told him, Lord *North* and *Grey* was thought of for the Command.'

On the 20th of April, O. S. (a) Intelligence came from *France*, 'That the Week before the late Duke of Ormond had made Application to the Regent by a Person of great Distinction, for Leave to pass into *France*, under Pretence of going into Italy; but that the Regent had absolutely refused him, and at the same Time had dispatched the necessary Orders to the Frontiers of *Spain*, to hinder him from passing either openly or in Disguise.'

On the 2d of May, O. S. Sir *Luis Salm* sent Advice, 'That one *Ledy* had been looking out for Lodgings at *Paris* for the late Duke of Ormond, and (g) on the 9th, that *Abraham Barber* carried with him Bills of Exchange for Fifty Thousand Pounds Sterling for the Pretender; and that the same Sum was sent to *Ormond* by another Hand, to enable him to make the necessary Preparations in *Spain* and *Italy*. The Committee observe, that this agrees, as to the Division of the Money, with a Passage in another (h) Letter from *Dillon's* Secretary to *Gregory Kelly*, dated the second of May, N. S. which will be further explained in its proper Place.

On the 13th of May, O. S. Sir *Luis Salm* sent (i) Advice, 'That the late Duke of Ormond was to sit out from *Madrid* about the 20th of that Month, with his Family, without any being known whether he was going; that it was believed he would give out that he was going to *Seville* at a certain Distance from *Madrid*, from whence he might sail away afterwards undisturbed.'

On the 23rd of May, O. S. Mr. *Swanby* (k) writes Word from *Madrid*, 'That having had Intelligence to be rely'd on, that the late Duke of Ormond intended secretly to pass into England, with a great Number of Irish Officers at that Time in the Service of his Catholic Majesty, in order to put himself at the Head of the Rebels there, and for that Purpose was to set out from *Madrid* the next Day, under Pretence of going for the rest of the Summer to *Valencia*, a House of the Duke of *Medina* Celi, half-way between *Madrid* and *Bilbao*, but in reality to be thereby enabled to pass to that Port, and with less Suspicion to embark from thence for England, whatever Matters should be ripe for his so doing; he made Application to his Catholic Majesty by the Marquis de *Grisol*, for Orders to be sent to all the Ports of Spain, to prevent the said late Duke's embarking with the Officers above-mentioned, and received a Letter from the Marquis de *Grisol*, (a Copy (l) of which is annexed to this Report) acquainting him, that the King of Spain had dissolved such Orders to be issued, and was ready on all Occasions, more particularly on this which regarded the Quiet and Tranquillity of his Catholic Majesty's Kingdoms, to contribute all in his Power towards 'his Majesty's Satisfaction.'

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Loyr further said, "That Kennedy, in his second Visit, appointed him to meet him in Colneel Hope in the Square before the Pretender's House at Ten the next Night; that he met them there, and that they concluded him up a Pair of Back Stairs to the Pretender."

Before the Committee proceeded to give an Account of the Conversation which Mr. Loyr says he had with the Pretender, they think it proper to observe, that among *Plamlet's* Papers were found two foal Draughts of Letters, which are sworn to be *Plamlet's* Hand-Writing, which give some Light to the Occasion of his and *Loyr's* Journey to Rome. The first is without Date or Direction but appears evidently by the Matter to have been sent to the Pretender, and about the same Time as the last one, which is dated the 22d of March, 1722. [about ten Days before his and *Loyr's* setting out] and directed To Mr. *Jacquin*, which Name is found in a (a) Cypher taken among *Plamlet's* Papers, and sworn likewise to be his Hand-Writing, to denote the Pretender.

In the (b) first of these foal Draughts are these Words: "There is one that sets out from *Norfolk* in a few Days to let you know they (that is the *Tenants*, which (c) he explained to *Loyr* to mean the *Tories*) will stand by you on Occasion: He only stays for me, and offers to bear my Expenses, so that I shall wait on you, and have the Satisfaction to tell you by Word of Mouth what will be acceptable. He carries *The Liff* with him, no doubt but you may have some such now."

In the (d) Letter to *Jacquin* of the 22d of March are these Words: "The Gentlemen I mentioned to you formerly, is come out of the Country, with Instructions to wait on you, and tender you his Service. He offers to bear my Expenses."

From these Passages compared with the (e) Letter received by *Plamlet* from *Dillon* at *Amoy*, in which *Dillon* says, "I have felt *Jacquin's* Advice in your Journey, in which I wish you and your Companions, tho' unknown, all Happiness: And then directs him to apply to *Kennedy* at *York* for Instructions; and compared likewise with the Pretender's (f) Letter to *Plamlet*, in which he directs him not to mention any thing of *English* to any Body till he had from him alone, in order to agree with him the most private Way and Manner for meeting his Companion. It appears to your Committee to be most evident, that *Loyr* did not undertake so long and expensive a Journey on uncertain Prospects of private Benefits, or out of mere Curiosity; but that his Journey was concerted with the Pretender's Friends at Home, and notified to the Pretender and his Agents Abroad; and that he carried over with him Treasures of Service to the Pretender from Persons in England, as likewise a List of Names, which was of such Importance, and so well understood and expedient at Rome, as to be mentioned by *Plamlet* in one of his Letters to the Pretender, without any other Description than barely that of *The Liff*.

The Committee thought this Observation the more necessary to be made, because *Loyr* did of himself owe to them his giving to the Pretender a List of Names, and the Pretender's asking him at a second Interview, what he had to say in relation to his *Liff*, but yet endeavored to explain that Affair in such a Manner, as your Committee apprehend to be no Ways consistent with *Plamlet's* foal Draughts above-mentioned, nor with the Expectations that seem to have been raised in the Pretender and his Agents, from *Loyr's* and *Plamlet's* Journey.

*Loyr* told your Committee, "That on his being introduced to the Pretender by *Kennedy* and *Hope*, as above-mentioned, the Pretender asked him the Occasion of his coming, and whether he had any Credentials from People in England? That he answered, Nothing but Curiosity, and a Desire of paying my Duty to your Majesty, his brought me hither. That the Pretender asked him, what Lords he was acquainted with in the Country? To which he answered, None, but such as he was concerned with in the Way of his Profession. That the Pretender again expell'd himself forsworn at his having no Credentials nor Recommendations from any Person in England; and said, This Journey must have been very expensive to you, I believe it cannot cost you less than five hundred Pounds. To which he answered, That a private Affair, which brought him to Rome, would have defrayed the Expense, if it had succeeded; but that being disappointed in that, his Inclination drew him on to Rome, to pay his Duty to the Pretender, which he had long had in his Thought, so took that Opportunity of doing it. That one *Plamlet*, who was now in Rome with him, had often told him that he need not fear being introduced, or to that Effect. That the Pretender said, He believed that *Plamlet* was a very honest Man, and as proper a Person as *Loyr* could have had for a Companion."

The Committee observe, that what is here said concerning the Pretender's good Opinion of *Plamlet*, and *Plamlet's* having given Assurance to *Loyr* of his being introduced, was not mentioned by *Loyr*, till after *Plamlet* had been examined.

*Loyr* further said, that the Pretender again repeated his Surprise at his having no Recommendation from any Person in England; but said, I am informed by *Francis Kennedy*, who knows you, that you have a good Character, and for that Reason you are welcome without any Credentials. Yet your Committee observe, that Dr. *Blackley Fairfax* (an intimate Acquaintance of *Loyr's*) (a) has deposed upon Oath, "That *Loyr*, since his Return from Rome, told him, that while he was in private Audience with the Pretender, a Scotch Colonel broke in upon them, upon which the Pretender took him into another Room; and that he, *Loyr*, did then deliver his Credentials to the Pretender."

*Loyr* told the Committee, "That the Pretender, after the Difficulties above-mentioned, asked him what Country he was of, and what Gentleman he knew: That he answered he was of *Norfolk*, and knew all the Tory Gentlemen of that County. That the Pretender asked him if he could recollect their Names, and put them down in Writing: To which he answered, He could easily do that, having brought with him Memorandums of their Names. That accordingly he drew up a fair List of the Tory Gentlemen of *Norfolk*, and gave the List left to the Pretender at a second Interview, thinking it would be agreeable to him. That the Pretender then asked him, whether he would be the Queen (meaning his

Spouse), and promised he would admit him to his bed. To which he answered, "That about three Weeks or a Month after, *Francis Kennedy* and *Colonel Hope* appointed him to meet them at the same Place and Time as before, and introduced him to the Pretender and his Spouse. That the Pretender then called him to him, and asked him, Whether he had any thing to say in Relation to his *Liff*? That he answered, He forgot the thing which he had to communicate to his Majesty; that the Pretender said, His Wife would go out of the Room presently, and soon spoke to her as *James*, as he believed. That she then asked him, What he had to say: To which he replied, "I have nothing material to offer as ought to have procured me this great Honor and Indulgence; but if that I be any Service on Earth, I can do it with an equal readiness. That the Pretender said, What can you do? Have you any Acquaintance? To which he replied, that all the Persons mentioned in his *Liff* were entirely devoted to the Pretender's Interest, and all the Gentlemen in England the same, except those in Places of Profit and Trust, and that all Parties were united in his Interest. That the Pretender then asked him, What the Gentlemen were whose Names were in his *Liff*? To which he answered, They were all Tories, and that he could not put down any of the Names of *Norfolk*, of whom there were several, Men of Estates. That the Pretender said, he believed the People of England were generally well-inclined to his Cause, and pity well convinced of their Error; and then spoke of the Disadvantages occasion'd by the *Sack-of-Rome* Scheme."

The Committee observe that in the Cypher which *Loyr* received from Sir *William Ellis*, the Names of several *Norfolk* Gentlemen are inserted, who, they think it probable, made a Part of the *Liff* delivered by *Loyr* to the Pretender, but at the same Time they think it a just Idea to suppose, that those Gentlemen, in whose Cause *Loyr* has acted to the Contrary, this, in order to impute the Number of the Pretender's Friends, he has in several of the *Liffs* found among his Papers under the Names of Persons as well-affected to the Pretender's Service, without any use the least Authority from them for so doing: And his false Assertion to the Pretender, that all the Gentlemen in England, except those in Places of Profit and Trust, were actually devoted to his Interest, shews, that made no Distinction between the Interest and the Gentry.

He next acquainted the Committee, "That after the Difficulties before-mentioned with the Pretender in relation to the *Liff*, the Pretender observed his Zeal, and told him, he might depend on any Service he could do him. That he, *Loyr*, then desired some Token, by which he might obtain Credit among the Pretender's Friends of the Nobility in England, and obtained that of the Pretender and his Spouse's signing for his Child; which the Committee need repeating, the Pretender gave them signing with that printed in his *Liff*. He said, "That upon his sending a Letter to the *Dutchess of Ormond*, for her republishing the Pretender's Spouse, *Colonel Hope* told him, no Letter could be sent by him, but that Care would be taken the *Dutchess* should find it. That he likewise gave him a Message to the *Dutchess*, to this Effect, that the *Duchess of Ormond* was well, and gave in Madrid, by which he said, that the world would understand the Business he came about."

That he returned to England about the End of *August*, or Beginning of *September* 1722, and waited on the *Dutchess* with his Message, adding that he hoped he was not altogether a Stranger to that *Admiral*, to which she returned him no particular Answer, but promised to stand God-mother, as he desired."

That he then made Application to Lord *Orrery* to stand with her, in the *Thames*, whom he took to be her Chaplain, and by his Intercession, Lord *Orrery's* Secretary, who understood that Lord *Orrery* was desirous to ingratiate the Pretender. That the said Lord sent to the *Dutchess* to know whether the *Duchess*? Who answered that he did; yet Lord *Orrery* refused; and upon further Acquaintance, and hearing on Lord *North* and Lord *Grey* had confidently said, he first for *Loyr*, and made Excuses to him for his Refusal. That he made use of this Circumstance to Lord *Orrery*, to induce him to converse freely with him in relation to the Pretender's Affairs, having heard that the said Lord was the Pretender's Interest."

That upon his being refused by Lord *Orrery*, he made his Application to Lord *North* and Lord *Grey*, as mentioned in his Trial, who stood knowing, as he believed, that he stood for the Pretender. That the Transaction was the Beginning of his Intimacy with Lord *North* and Lord *Grey*. That the first Conversation he had with Lord *North*, relating to the Pretender's Affairs, was from after the Christmas; that he then asked Lord *North*, whether nothing could be undertaken by the Pretender's Service, his Lordship being a military Man? That his Lordship replied, he believed the Pretender had French enough, if they did not understand one another; that the Army in general, and most of the Half-pay Officers, were well-inclined to the Pretender."

That in July last, he, *Loyr*, going down to *Norfolk* on the *Cleaveland*, called on Lord *North* at *Epping*, and again at his Return; that he then called the said Lord again, whether nothing could be done in Favour of the Pretender? That Lord *North* said, How can any Thing be done, while he great a Body of Forces is enclosed under the very Walls of London, besides the Encampments in other Parts of the Kingdom? That *Loyr* told him, he found most of the Gentlemen in *Norfolk* that were Tories before, Jacobites now; that Lord *North* and Lord *Grey* said, was the same in other Counties, but that nothing could be done till the Camp should break up. That upon *Loyr's* pressing him to know whether any Scheme was formed, Lord *North* said, What does your Friend Lord *Orrery* think of things? That he answered, Lord *Orrery* was of Opinion, nothing could be done without a Foreign Force; that Lord *North* and Lord *Grey* replied, I cannot be of his Opinion, I believe the People of England are tired of themselves."

That *Loyr* telling him during the Vacation, and staying two or three Days at his House, continued to press him about forming a Scheme, that Lord *North* replied, We Soldiers do not make ourselves much

(a) C. 24. (b) B. 21. (c) B. 25. (d) C. 41. (e) B. 24. (f) C. 46. (g) B. 26.



about Schemes: *As you said, something will be done.* And at this (a) Examination before the Lords, he owned, *That Lord and Grey said, if there be a Rising, you shall not want Men, or Money, or Arms.* *My Lord further gave your Committee an Account of his becoming acquainted with Lord, and of his carrying him to Lord North and Grey, and Lord's telling him that he had something to propose so that Lord might be of great Service to the Pretender's Cause.* But in giving an Account of what passed between Lord and him at the Green-Aden, your Committee observed, that Lord took great Pains to show, that he did not communicate any Papers to Lord *the day after Dinner*, and that he then only showed him Memorandums, transcribed out of the Prince of Orange's Decretals, *who Lord has (b) deposited upon Oath*, that Mention was made in that Paper of Lord Grey's being seized, still remaining in the Custody of the Conspirators.

He owned to your Committee his having carried Lord to Lord Castle, and said, *He went thither only in relation to the Purchase of an* (c) *House*, at which while they were waiting there in a Room near the Garden, Lord viewed the Garden and House, and said, *I can easily seize you* General: but he deny'd then having had any previous Discourse with your Committee, and said, the Proposal arose from Lord, and that he, Lord, was not enough to make it Part of his Scheme.

He said, *That when Lord and he came to Lord North and Grey's, the Lordship asked him who Lord was.* That he said, *He was an honest Gentleman, recommended by a particular Friend.* Then his Lordship said, *I wonder you would bring him, you know I am not at all in a hurry to receive him.* That, however, Lord North and Grey introduced Lord into the House, and after Supper inquired of him, *what he was in the Army?* To which Lord answered, *That he was bred up to Merchandize, but had been with the Pretender in Scotland, and the Command of a Ship under the King of Spain in the Defeat on a* (d) *Sea-battle*, and enlarged much on his Loyalty and Zeal for the Pretender, but that Lord North waved the Discourse.

That last night after, Lord came down again to Lord North and Grey's to sup, while Lord there was > footing, and was civilly received by the Lordship, and that after he was gone, Lord making Apologies for Lord's intruding, Lord North and Grey said, *Lord was a good* (e) *man* below, and had entertained them with several merry Stories.

The Committee observed, That Lord, in relating what passed while Lord was at Lord North's, took so much Pains to show that Lord North and Grey could have no private Discourse with Lord, that he left no room for the fact Lord North's having had any private Discourse with him, Lord, which yet is inconsistent with his (f) Examination taken before the Lords, as well as with his Confession to your Committee, in another Part of his evidence, that while Lord was at Lord North's, he, Lord, heard Lord North's Part of his Scheme, or Heads relating to a Declaration, as he was walking with him in the Garden, and that they had long Discourse upon it.

They observe likewise, That what he owned to the Committee in relation to his introducing Lord to Lord North and Grey, falls very short of what he confessed to the Lords of the Council on the same Subject, previously in his Trial. For he (g) then said, *That Lord having told him he would join Lord Castle, he carried Lord to Lord North and Grey's, and recommended him as a proper Person for such an Attempt.* That he had been hand proposed to Lord North and Grey the carrying Lord to him; that his Lordship made a Difficulty of seeing him; but that he, Lord, insisted on Lord's being an honest Man, fit to be employed in an Intake of the Pretender; saying, *Lord would do any thing he* (h) *thought* would be his, if there should be a Rising: That he was fit to be sent with a Party to seize any particular Person, and that Lord was impatient to see his Lordship, Lord having told him, that his Lordship was at the Head of those Designs.

Lord further acquainted your Committee, *That during his Stay at Lord North and Grey's at Lord Castle, in the Vacation, he again promised his Lordship to bring Matters to forward in Favour of the Pretender, saying, if it should be, not done speedily, we shall all be taken up; that* (i) *his Lordship replied, Is not the Camp there still? If you can find some Expedient it would be well, it is more than I can do.* That Lord said, *It was his Opinion something might be done even during the Encampment; and in order to discover whether Lord North and Grey, and Lord Grey had any Scheme of their own, he drew up a Scheme himself, and having done, lodged it with Mrs. Mordaunt the Day before he was taken* (j) *up.* That he intended to have communicated this Scheme to Lord North and Grey, and Lord Grey, that he had some Discourse with *George Wylson, Dr. Marpley and others*, on the Subject of it, before it was drawn up. Being asked, *Who these others were?* He said, *He could recollect no one else but who were called himself, Sergeant Wharm, when he was in Company with Dr. Marpley at a Tavern, and inquired of him, how far some Parts of his Scheme were practicable.*

Being asked whether he had shown this Scheme to any Body? He said, *He did show the Head of it to Lord North and Grey, as he was walking with him in the Garden, and that his Lordship said, all was impracticable during the Encampment; but that he never showed his Scheme to any Body after it was drawn up in the Form in which it was left with Mrs. Mordaunt.* Which last Part of his Answer, the Committee observe may be false, since by his own Account, as soon as he had drawn it up in the Form, he lodged it with Mrs. Mordaunt, and the Day after was taken into Custody.

The Committee further take Notice, That the Account he gave when he was questioned before the Lords, whether he had shown this Scheme to any Body, are inconsistent and contradictory.

They are in some Part of that (k) Examination, he says, *That Lord North and Grey would not hear of any Thing till the Camp was broke up.* That the fact Lord would not hear of his Scheme? That the fact Lord said, *He might keep his Heads and his Schemes to himself, for there was nothing to be done; That the fact Lord said there was Time enough for forming a Scheme,* (l) *and yet in another Part of the same Examination, he*

says, *That Lord North did not dislike a Scheme in general, but disapproved of his Scheme.*

Your Committee beg leave to make the following Observations on these Passages, with a Design to show the Inconsistency and Incoherence of Lord's Confessions, and without pretending to draw from them any other Conclusions.

First, That if what Lord said was true, Lord North must have perused and examined Lord's Scheme; since a Man that did not dislike a Scheme in general, could not be said to disapprove any particular Scheme, unless he had first considered and examined it.

The Committee observe further, that the Scheme itself does not appear drawn up by a Man of Lord's Profession, skilled only, as he would insinuate, by *Marpley* a Doctor of Physick, *Wylson* a Surgeon, and *White* a Scribe, and they cannot but think it very extraordinary, that his Scheme, drawn up in *August or September*, should have got an Affinity with the (m) Paper of Refutations, for the *Agging* of the *Army*, mentioned above, which was drawn up the *April* before, and yet that Lord should have had no Sight of that Paper, nor have received any Instructions or Assistance from any Person, who were privy to those Refutations, which he has declared to the Committee he had not. And the Committee are further confirmed, that the Scheme was not drawn up by himself, from a Particularity contained in a (n) Deposition of Dr. *Blackley* *Wylson*, who has sworn, That being for four or five Years past employed in raising Cavalry, Lord and Ford to the fact Lord, he recollects that Lord once asked him the Meaning of the French Maxim, *l'ennemi se fiant* to his Scheme in these Words, *le desast de la Force il faut employer la Ruse*; and that upon *Wylson's* explaining it to him, Lord said, it had been explained to him in the same Manner by others. Neither does the Scheme appear drawn up at a Tavern, or merely with a View of engaging the Pretender's Friends in the Execution of this or some other Scheme of their own, as Lord would insinuate; but several Passages in it, compared with his other Papers, make it probable, that the Officers, Sergeants, Soldiers and Artificers mentioned in the Scheme, were first engaged and prepared, and then the fact Scheme drawn up, for employing in the best manner possible, such a Force as had been so prepared.

Thus appears by comparing these Words in the third Paragraph of his (o) Scheme *And there is eight Sergeants, viz. Three of the first Regiment of Foot-Guards, Three of the second, and Two of the third, all ready at an Hour's Warning to obey Orders*, with two of his Papers taken with his Scheme at Mrs. Mordaunt's, viz. (p) That which contains a List of Thirteen Sergeants of the Guards, and another (q) Paper of Lord's Hand-writing, which contains Eleven of these Thirteen Sergeants' Names, and Eight of these Eleven Sergeants have Marks fit against their Names: to that it may be concluded, from thence, that Lord had been able to engage but eight of the said Thirteen Sergeants; and therefore, in his Scheme, he mentions no more than Eight Sergeants.

The Truth of this Observation further appears, by comparing Lord's fact (r) Examination of the 11th of *October*, with the fourth Paragraph of his Scheme, for in that Examination, he says, that *George Wylson* had assured him, that two hundred of the Soldiers in the Camp had been spoken to and were ready: and therefore Lord, in the fourth Paragraph of his Scheme, mentions only two hundred Soldiers to be ready, and gives every one of his eight Sergeants the Command of Five-and-Twenty of the said Two Hundred Men. From whence it may be concluded, that the Officer that was to direct the *Troop*, and the Arms for executing the Scheme, were also in a Readiness.

It is further remarkable, that Lord intended, as he owned to your Committee, to communicate this Scheme in its perfect Form to Lord North and Grey, and Lord Grey; and yet several principal Parts of it are not explained as Things now, but referred to as Matters already known and understood by the Persons that were to see it, which could only be by previous Communications on that Subject; for Instance,

In the Fifth Paragraph it is said, *Let the General and only one Officer of his own Camp agree upon a Day for Execution*; which must have presupposed a most strict Beginning to any Body that had not had some previous Discourse or Notice, of several Officers in the Camp engaged in the Design. And the same Observation will hold, with respect to the Paragraphs where Arms were mentioned as provided; which shews, at least, that Lord believed those Persons that were to see his Scheme, had heard of Arms that were provided.

In the Third Paragraph, *George Wylson* is named in such a Manner, as makes it probable he was already known to those who were to have a Sight of this Scheme, and the Committee observe, that Lord's Confession to the Lords that he had told Lord North and Grey, that *Wylson* was a Fellow who had served in the Army, had a general Acquaintance, and was fit to be employed if his Lordship would make use of him; to which the fact Lord replied, *That when he had Occasion he would employ him.*

In the Thirteenth Paragraph of the Scheme it is said, *Let the General order four of the Half-pay Captains*, without any further Description, which shews that Lord thought those as whom his Scheme was to be communicated, knew already of Half-pay Officers that were engaged, agreeably to what Lord North and Grey had (s) told him, that most of the Half-pay Officers were well inclined.

In the Nineteenth Paragraph, he allots Part of the Execution of the Design to the *Duke's* *Burgess*, without any other Addition; which is a Manner of Expression no one would have used in a Paper to be shown to Persons, who were entire Strangers to the Affair.

Lord being in the Course of his Examination asked by the Committee, to explain by what Services or Merit on his Part, the *Shyness*, which he would have believed, the Pretender expected towards him at his first coming to *Rome*, and the little Acquaintance he then had with Persons of Discretion at home in the Pretender's Interest, came from this to be changed into so great a Degree of Confidence both as *Rome* and here, that he should be treated with approaching Black Reproach, under the Pretender's own Head, for unskilled Sums; he told the Committee, that

(a) B. 1. (b) B. 1. (c) B. 1. (d) B. 1. (e) B. 1. (f) B. 1. (g) B. 1. (h) B. 1. (i) B. 1. (j) B. 1. (k) B. 1. (l) B. 1. (m) B. 1. (n) B. 1. (o) B. 1. (p) B. 1. (q) B. 1. (r) B. 1. (s) B. 1.

(t) B. 1. (u) B. 1. (v) B. 1. (w) B. 1. (x) B. 1. (y) B. 1. (z) B. 1.







and, grounds his (a) Recommendation of Mrs. Leger, on his Knowledge of her Husband's Merit and Industry in the Service of the Country. They likewise observe, that Leger owns he received the Names of Digby, Burdett, &c. from Phaulst since his Return from Rome, which they think plainly implies, that Phaulst and he were privy to each other's treasonable Conspiracies.

The several Particulars above-mentioned contain the Substance of what Leger confessed on his Examination before the Lords, and before your Committee. And after that long Account given by him, in which there appears so many and such convincing Proofs of the Conspiracy in general, your Committee think it proper to observe, that though so afflicted a great Oppressor and Frankfort, when such Officers were put into as trivial role in a general Discovery, to accuse himself, or such as he knew were engaged and fled out of the Kingdom; yet when such Questions were put to him, as he apprehended might affect or discover any others of the Conspirators, he always gave Answers with great Sincerity and Reserve; and in Case to say as little as possible that might affect others in a criminal Cause, joined with a Desire to seem candid and ingenuous, often produced the inconsistencies and Contradictions, upon which the Committee have thought it their Duty to make the foregoing Observations.

Your Committee will now proceed to lay before you what they have been able to collect from the Papers and Examinations of John Phaulst, whose treasonable Practices and Correspondences, as has been observed before, appear to be so closely connected with those of Leger, that they give great Light and Confirmation to each other.

The Committee observe, from a careful Perusal of the Letters and Cyphers found at Phaulst's Lodgings, that he was not only false, but for many Years past, has been employed in carrying on several treasonable Correspondences with Persons of high Rank and Distinction abroad; that a vast Share of Confidence has been placed in him by the Pretender, and that of the most considerable Agents for him, and that he has been a principal Actor in the late horrid Conspiracy, and too much, as they have reason to believe, concerned in the blackest Part of it. And though the Evidence against him, in several Particulars, is most full and undeniable, yet his Behaviour on his Examination was so hardened and obstinate, and assisted with such base and malicious Pretences and Falshoods, that the Committee are very much confirmed in the Opinion of his Guilt, from the Assurance he took to deny, with solemn Imprecations, the most evident Truths.

Leger (a) confessed to the Lords, that Phaulst recommended Jolly to be a Man of Integrity, that Phaulst went by the Name of Rogers in July and later; and (c) signed the Letter which he gave Mrs. Leger for General Dillon, by the Name of Rogers. But the Committee observe, that Leger has been in the error of believing that Phaulst's Christian Name was James, till the Question was put to him, on his second Examination, in June, a Moment, that he found the Committee were already apprised of his true Name, which he then owned to be John. He further owned, as has been observed above, that Phaulst received a Letter under the Pretender's own Hand at Rome, was twice in private Conference with the Pretender, conversed with Kennedy and other Agents of the Pretender, had assisted him, Leger, of a good Reception at Rome, was really spoken of by the Pretender, had owned to Leger his being employed in the Pretender's Service, and his corresponding with Dillon, writ to Leger in Maryland, in relation to the Pretender's Affairs, and gave Leger Christian Names for Leger, Lord Grey, the Regent, &c. and among the rest, the Name of Rogers, to denote him. Rogers, which Evidence he has since confirmed in the Oaths frequently used in Phaulst's Papers.

It appears farther to the Committee from (d) Depositions upon Oath of Matthew Phaulst, that John Phaulst came to him in July last from Leger, to desire him to meet Leger at the Italian Coffee-house in Regent-Court, and send to him the first Person, as ready to hand an Introduction, who was at some other Time named to the said Matthew Phaulst by Leger on the same Occasion.

That he (e) farther said Matthew Phaulst, whether he was well acquainted in the Army among the Soldiers: To which he replied, he knew many of them that had been with him in Spain and at Prague. That John Phaulst then told him, he came from Mr. Leger, and under the Arch going into Drury-Lane, desired him to pick out as many Sycrants as he knew as the Guards so recommend them to Mr. Leger: That the next time he saw Matthew Phaulst, which was in two or three Days, he invited him to his Chambers, and there told him Mr. Leger was a very good man, and the only one he could depend on to do him Service: That the design on which he, Matthew Phaulst, was to introduce the Soldiers to Leger's Acquaintance, was to serve the Pretender by disclosing the Mach, who were to rise in his Favour. And that all the Transactions of John Phaulst with him, Matthew Phaulst, was, to engage him in Person, and by his Acquaintance among the Soldiers, to serve the Pretender: That John Phaulst meeting him afterwards in Great-Geordie, asked him what he had done: To which he replied, he went on very well, and John Phaulst bid him go and tell Mr. Leger.

Matthew Phaulst farther deposes, That John Phaulst told him, the Bastards (meaning the Invasion and Rebellion) had been done before, but that the French Ambassadors wrote to the Regent, and the Regent wrote it to King George (so Words to that Effect) and it was upon that Account the Army was sent to Cambray.

Dr. Blackier farther says (f) deposed upon Oath, that being in Company with Phaulst and one Joffrey, Joffrey among other Discourse said, Prunkett, give the Doctor a Champagne, adding, Prunkett her Champagne, which Joffrey understood to mean Constidions from the Pretender; but that Phaulst answered, The Doctor did not over a Sword.

The Committee observe, that among Phaulst's Papers was found a large Copy of Names with Christian Names over-against them, (h) from which all in Phaulst's own Hand-writing, which Cypher talks with, and

explains an original (i) Letter of the 23d of July 1723, directed to Mr. Digby at Paris, and signed by Rogers, which was sent to the Post-Office, and is likewise (j) found to be Phaulst's Hand-writing. And several other Letters directed to Digby, and signed by Rogers, having likewise been opened and copied at the Post-Office, and thus sent forward, the Clerks who were employed in copying them have found, that, to the left of their Memory and Relief, the Originals of the said Letters were all writ in the same Hand with that of the 23d of July, which was stopped, and is found to be Phaulst's Hand-writing, and the said Copies of Letters treat of the same Matters as the others, and contain the same Editions. Names which are found in the Cypher Letters to be in Phaulst's Hand-writing.

The Committee are not-else, that it was thought proper to stop but one of the original Letters from Phaulst, and to shew the others to go on, because it was judged that one was sufficient to discover the Writer, and that the permitting the Correspondence to be continued, might lead the Government to further Lights in this Affair.

The Committee likewise observe, that there was found among his Papers an (l) original Letter signed Digby, dated the 30th of May, 1723, which is taken by the Clerks of the Post-Office to be the same which they opened and took a Copy of, and which was directed to Mr. James Rogers, at Mr. d'Almeida's, Banker in London, and the Dutchess is since torn off. From this Direction your Committee observe, that his Christian Name was disguised as well as his surname. The Receipt of this Letter is acknowledged in the (m) Copy of one to Digby signed by Rogers, and dated the 21st of May, O. S. 1723.

The Committee observe, that the original Letter signed Digby, is in the same Hand with (n) another signed D. Smith, found among Phaulst's Papers, and owned by Leger to be the Letter drawn him by Phaulst at Amberg, as from General Dillon, that the Letter signed Digby is also in the same Hand with (o) another Letter signed A. D. and directed to Robert Diller Esq. which, as your Committee are informed, was taken on one Night a Popish Priest coming over from France, and owned by Leger to be from General Dillon to his Nephew. And the Committee farther observe, that these three Letters signed Digby, D. Smith, and A. D. are in the same Hand with (p) another signed G. Howard, found also among Phaulst's Papers, whose Name of Howard is explained in Phaulst's (q) Cypher to mean Guyton, whose the Committee is Ready to believe to be Chevalier Guyton, as his Officer in Dillon's Regiment, who is reported to be employ'd by Dillon in writing the treasonable Letters signed by Dillon himself, as well as in writing others of the same Kind, signed by different Names belonging to him, &c.

The Committee observe, that in the (r) Copy of the Letter, signed J. Rogers, directed to Digby, and dated the 9th of July, 1723, the Person who writ that Letter, says, that his Fellow-Traveller's Wife parted hence the Day before for Paris; and that he gave her a Letter to him, Digby which agrees with Leger's (s) Confession, that Phaulst did give Mrs. Leger a Letter of Recommendation to Dillon, signed Rogers, and that he received from Phaulst the Name of Digby to denote General Dillon, whose Name was also (t) contradicted to Leger by Lord Grey to mean Dillon. But that Dillon went by the Name of Digby is put full at doubt, by a Discovery made by Mr. Crawford, his Majesty's Resident at Paris, who being ordered to discover the Person meant by that Name, made use of the following Contrivance, mentioned thus in his own (u) Letter.

I have just now found out who Mr. Digby is. I lived up a Paper in the Form of a Letter, and sealed it, and directed it to Mr. Digby at Paris, which was done in a Place of white Paper with a Memorandum in it, to be delivered to Mr. Winton's, Banker in Chancery Street, in what Part of Paris Mr. Digby lived; I gave it thus made up to a young Guyton Fellow who speaks both French and English, and ordered him to go booked and a little directed to Mr. Winton's, to open before him the Sham Letter, and read his Memorandum, and to show him the Direction of the Letter, and to deliver him at the same time to send somebody with him, as to conduct him to the Place where it was to be delivered, that as soon as he should come to the Door, where he was to deliver it, he should pretend to have left a Packet at Home, and making as if he would go back to fetch that Packet, he should fly away from the Person who directed him thither. The thing succeeded better than I expected, for Winton's chief was not at home, and my Man did his part so well, that Winton's chief Book-keeper, without giving himself the trouble of going, wrote the Direction for him upon my Sham Letter, in the manner your Excellency will see at the enclosed. The Book-keeper was very desirous to have the Letter in order to deliver it himself, but my Man insisted to deliver it with his own Hand, and answered boldly as some Questions which the Book-keeper asked him, promising he would to return the next Day for England. The Direction writ by Mr. Winton's Book-keeper under the Name of Digby was, A. Monsieur Dillon, Rue Calatoire d'Henri d'Albani's, which, as your Committee are informed, is the ordinary Residence of Lieutenant-General Dillon.

Upon this Discovery (v) Notice was first from France, by Diller and his Agents, to his Correspondents in England, to forbid them making use any more of that fictitious Name, as shall be more fully taken Notice of hereafter in this Report.

Notwithstanding all this Evidence of Phaulst's corresponding with Dillon, when he was examined (y), he denied his knowing General Dillon, or his having ever exchanged a Letter with Dillon or his Secretary in his Life; he denied the Letter to Digby of the 23d of July, stopped at the Post-Office, and the Cypher found at his Lodgings to be his own Hand-writing; he denied the Receipt of the Letters from Howard, D. Smith and Digby, found among his Papers; but owned he had once received a Letter from one Family a Popish Priest, formerly Governor to the Duke of Berwick's Children, signed by the Name of Digby, and relating to Stocks of Amberg &c. and others. The Committee observe that in this prejudicial Answer he was labouring to account

(a) C. 61. (b) C. 11. (c) C. 21. 23. (d) C. 43. 47. (e) C. 44. (f) D. 26. (g) C. 27. (h) C. 47. (i) C. 48.  
(j) C. 24. (k) C. 24. (l) C. 24. (m) C. 24. (n) C. 24. (o) C. 24. (p) C. 24. (q) C. 24. (r) C. 24.  
(s) C. 24. (t) C. 24. (u) C. 24. (v) C. 24. (w) C. 24. (x) C. 24. (y) C. 24.



for the Messing of the Wood Study, which is mentioned in the Letter from Digby, but will be shown, in the sequel of this Report, to be means in a very different Sense from its natural Import, and to mean the Conspiracy only; and in Plaintiff's own (s) Cypher the fictitious Wood Brothers, is explained *Againt*. Upon pressing him farther to say if he would own the Correspondence with Dillow, and acknowledge the Letters the Committee had such full Evidence were his, they found that, in order to avoid the owning it, he ran himself into such an evident Absurdity and Inconvenience, as appears to them a strong Argument of his Guilt.

(t) He affirmed the Cypher (which is known to be his own Hand-writing) to belong to one Hugh Thomas, formerly of the Herald's Office, who had lodged in the same House with himself; that he had heard that Hugh Thomas was in Company with Rogers, that he corresponded with Dillow; that Hugh Thomas went by the Name of Rogers, and that he, Plaintiff, found this Cypher, and several Letters directed to Rogers, among Hugh Thomas's old Books and Papers. Being asked whether Hugh Thomas ever sign'd Plaintiff? He said, Not to his Knowledge; and then endeavored to impose on the Committee, by telling them his own true Name was Plaintiff. Being asked what was become of this Thomas? He said, he had been dead a Year and a Half, and that he, Plaintiff, could not keep him alive. But the Committee observe, That the original Letter to Digby, signed T. Rogers, is dated the 23d of July last, and yet is in the same Hand with that Cypher, which he pretends to be the Writing of a Man who has been dead a Year and a Half. They observe likewise, that the Letter from Digby directed to Rogers, is dated the 20th of May 1722, and that most of the Letters directed to Rogers (which Plaintiff pretends were writ to Hugh Thomas) had the Name of Rogers blotted out, and that of John Plaintiff writ over it; and yet he owns, he never knew that Thomas went by the Name of Plaintiff. Besides which, it is notorious, that Plaintiff himself was by the Name of Rogers in Italy, and Leger has (r) owned not only that Plaintiff went by that Name, but that he signed Mrs. Leger's Letter of Recommendation to Dillow, by the Name of Rogers, and also gave him, Leger, the Name of Rogers to denote himself, at the same Time that he gave him the Name of Digby for General Dillow.

Your Committee are of Opinion, that these Circumstances laid together, leave no room to doubt but that Plaintiff writ and received the Letter above-mentioned; the Contents of which will be explained in their Place. Plaintiff being shown a (d) Letter without Signature, signed N. Wigan, enclosing a (r) Cypher, which is called in the Letter the Duke of Berwick's Key, he said, this Letter and Cypher belonged to Hugh Thomas, who, he said, corresponded with the Duke of Berwick about getting Subscriptions to a Book; which Matter, the Committee observe, neither needed any Cypher, nor could well be treated of by the Help of that. They likewise take Notice, that Plaintiff owned the receiving a Letter from Digby in relation to the said Wigan's Stocks, and that Wigan is named in Plaintiff's own (f) Cypher by the Name of Roland, which Circumstance make it probable he did correspond with Wigan.

There is one farther Particular relating to this Cypher, which the Committee think it proper to remark to the House, which is, that Plaintiff, while he was in Calicut, desired a certain Book might be brought to him from his Lodgings, but the Merchant's Wife, searching the Book before she delivered it, has (z) depared upon Oath, that she found in this Letter from N. Wigan. And as the Committee are informed, that most of his other Cyphers and Papers were found hid in the Leaves of his Books, they think it probable, that he singled out this Book, in hopes of recovering and deciphering the Cypher that serves to explain his Letters; the Contents of which the Committee will not proceed to lay before the House, and to avoid Repetition of Names, whether they can, will make use of the real Names found in his Cypher, instead of the fictitious ones, by which they are exprest in his Letters annexed to this Report.

Among his Papers was found the (k) final Draught of a Letter, dated March the 29d, 1721, and directed to Mr. Tordoff, which in his own (i) Cypher is explained the Pretender. In this final Draught (which is known to be his Hand-writing) are the following Passages.

"I look, Sir, on your Love-Stamp to be in such a Forwardness, that a friendly and happy Replication must inevitably ensue; the Wiggs, as well as the Tamers (whose Names he explained to Leger to denote the Whigs and Tories) were convinced that nothing left can refresh their Ruin: " Nay the latter is apprehensive the former will compliment you with it on your own Terms, in order to engender your Favour for the future. " The Progress my Friend and I gave in lately, have contributed much to this Frustration: We have made to give in, and if they improve them as they have the former, you will have a good Game on't. " The Words Replication and Progress are not found in his Cypher, but the Sense of the former may easily be guessed at.

"He afterwards adds, "The Gentlemen I mentioned to you formerly, as come out of the Country, with Intimations to wait on you, and to render you best Service; he offers to bear my Expenses if I go with him: " As I make it that my going will be of more use than my staying now, I believe I shall accept of his Offer. " In (h) another final Draught of the same Letter, he says (as has been before observed), " There is one last out from Norfolk in a few Days, to let you know the Tamers will stand by you on Occasion, and offers to bear my Expenses; so that I shall wait on you, and have the Satisfaction to tell you by word of Mouth what will be acceptable. He carries the Lid with him." And in (j) Heads or Tails at the same Letter, he says, " Wigs and Tamers " will equally contribute—My Friend will wait on you to render this Service—Our Missives will pass the Balcony—You may have daily Missives at this Kind; you will be covered, 'tis the English Way—"

The Committee think it unnecessary to repeat here, how inconsistent these Accounts of Leger's Journey, are with (m) those given by Leger himself; and how strongly they contradict Plaintiff's said (n) Assertions, that he knew nothing of Leger's Intention to go to Rome before they set out.

(s) Another final Draught of a Letter was found among Plaintiff's Papers, and it (seems to be his Hand-writing; the Matter of which appears to your Committee very remarkable. It is not dated nor directed, but appears plainly to have been writ the beginning of the last Year, and in it are the following Passages. " I had four of Count Ruliers Letters since my last to you; Mr. Norford had them all; his Clerk gave me to understand they were sent to Mr. Tordoff—This made me so to trouble you. This only to with you a happy new Year. I hope to well bring the Love-Stamp to bear, alive 'twill end; if they would have Courage and Integrity, they may walk R. George out after Lady-day next; (and in another Part he says, above May come) " He is weary of them, and thinks no more of flying among them." It appears from these Papers, that Plaintiff had conveyed Copies of some Letters of Count Ruliers to Lord Orrery; that Lord Orrery's Clerk had given him to understand, that these Letters were sent to the Pretender (from whence it may be concluded, that either Lord Orrery or his Clerk had a direct Correspondence with the Pretender); and that Plaintiff was prior to those Design for waiting K. George out (as he calls it), which Design required Courage and Integrity, and was to have been executed either before Lady-day, which was during the Elections, or by the Beginning of May, which was the latest Period fixed (as has been observed) for beginning the Intermittent. James Scarlett, Secretary to Lord Orrery, owned upon his (r) Examination before the Lords, that he was acquainted with Plaintiff, and had been in company with him and Leger at Mr. Aaron Thomas's Chambers. And Plaintiff (s) owned to the Committee his being acquainted with Scarlett, and his having been in company with him and Leger at Leger's House; but denied his knowing any thing of the final Draught of the Letters above-mentioned.

Plaintiff, in his (t) Letter to Digby of the 21st of May, says, " I boy " in a little Time Mr. Tordoff (which Leger owned to be the Pretender) will be the Minister only before Barfield (whom Leger declared to be likewise to be Orrery) and his Club intend to thank it: They will give a Finger on the Eye of the said; I know they can come in for a Share on it, if they can have a little Consent and Regulation; they are those that will undertake to do the Job in twelve Hours Time. A little Time will show whether they will give fitting Encouragement. " If two or three are taken off, no matter how, King George will go by hook or by crook, and of course the Love will be for Tordoff. " I beseech commutation to your friends."

What is meant by the Love, does not appear by his Cypher; but in the Sense, and the alphabetical Order of the Cypher, it is not impossible but it may mean the Ministry.

Whether the Job that was ready to be undertaken on string Encouragement, and to be performed in twelve Hours Time, relates to the old Intertake for supplying the City of London, which has been already taken Notice of, or to the wicked and execrable Design for seizing and detaching his Majesty's Sacred Person, of which Mention is expressly made in (j) two subsequent Letters of Plaintiff's, is left to the Consideration of the House.

But the Committee, from comparing the Memorandum at the End of the (r) Paper of Resolutions, in the following Character Dr. G. W. with the two or three that is mentioned in this Letter to be taken off, are likewise with Wigan's Intimation to Leger, that if Lord Cadogan were but that, the Soldiers would decline for Ormond; and also with Leger's Negotiation about fitting Lord Cadogan, and with the Paragraph in his Scheme for seizing some great Person at their Houses, for Relation to believe, that by the art, and other Characters is meant Dr. Francis Lord Cadogan, as by the others, and other Characters of Diffinition.

In the issue (s) Letter of the 21st of May, Plaintiff writes Notice, " That Tordoff's Acquaintance, was taken up the day before, but he burnt his Papers, and seemed to be only in the Matter; and said, " believe they will get nothing by him."

Plaintiff being asked by the Committee, whether he was acquainted with George Kelly, alias Tordoff, said he knew him by Sight and Confabulous Acquaintance only; that he did not remember his having ever received a Letter from him; and Kelly gave the same (s) Account in Relation to Plaintiff. Yet a (y) Letter from Kelly was found among Plaintiff's Papers; and John Molineux, who waited on Kelly at his Lodgings, has named Plaintiff in his (z) Deposition, as one who often visited Kelly, there. And the Committee are inclined, that they were party in each other's treacherable Correspondence, by force Plaintiff's in the (z) Letters to and from Kelly, in which Mention is made of Plaintiff by the Name of Rogers, as will be shown in its proper Place. Plaintiff concludes his Letter of the 21st of May with these Words: " The Motive of a Journey is over at present, my Pocket feels it, the Man must be full with Money now and then, the labouring Owl will, I believe, be full on me."

As he denied the writing these Letters, the Committee could not draw from him any Explanation of this Paragraph; but comparing it with the other Part of his Letter, where it is said, that a little Time will show whether Barfield (Lord Orrery) and the Club, would give fitting Encouragement for undertaking the Job; they think it appears probable, that some part in this Job is the labouring Owl referred to, for which he expected to be fed with Money.

His next (h) Letter to Digby is of the 23d of May, in which he says, " He finds the Regent had a Hand in keeping K. George from going abroad, so that the Ministry will carry on their Game safely and inflexibly, by which any Opposition whatever from the Club, or any of the Pretender's Friends. " He adds, " Let them be ever so singular, they can do nothing as long as the Regent stands by the Ministry, but I shall Ormond come, with half a dozen Regiments only, he would carry it by Force, and make K. George run for it." This Passage confirms what has been set forth above, that the late Duke of Ormond's coming out made a Part of the Original Scheme, and agrees with the (n) Accounts received from Spain, of Irish Soldiers provided there for the Pretender's Service.

(a) C. 51. (b) C. 11. (c) B. 10. 38. (d) C. 49. (e) C. 10. (f) C. 51. (g) C. 49. (h) C. 41. (i) C. 51. (j) B. 25. (k) B. 21. (l) B. 2. (m) B. 2. 11. (n) B. 2. 11. (o) B. 2. 11. (p) B. 2. 11. (q) C. 1. (r) C. 27. (s) C. 28. 30. (t) C. 28. 30. (u) B. 2. 11. (v) B. 2. 11. (w) B. 2. 11. (x) B. 2. 11. (y) B. 2. 11. (z) B. 2. 11. (aa) B. 2. 11. (ab) B. 2. 11. (ac) B. 2. 11. (ad) B. 2. 11. (ae) B. 2. 11. (af) B. 2. 11. (ag) B. 2. 11. (ah) B. 2. 11. (ai) B. 2. 11. (aj) B. 2. 11. (ak) B. 2. 11. (al) B. 2. 11. (am) B. 2. 11. (an) B. 2. 11. (ao) B. 2. 11. (ap) B. 2. 11. (aq) B. 2. 11. (ar) B. 2. 11. (as) B. 2. 11. (at) B. 2. 11. (au) B. 2. 11. (av) B. 2. 11. (aw) B. 2. 11. (ax) B. 2. 11. (ay) B. 2. 11. (az) B. 2. 11. (ba) B. 2. 11. (bb) B. 2. 11. (bc) B. 2. 11. (bd) B. 2. 11. (be) B. 2. 11. (bf) B. 2. 11. (bg) B. 2. 11. (bh) B. 2. 11. (bi) B. 2. 11. (bj) B. 2. 11. (bk) B. 2. 11. (bl) B. 2. 11. (bm) B. 2. 11. (bn) B. 2. 11. (bo) B. 2. 11. (bp) B. 2. 11. (bq) B. 2. 11. (br) B. 2. 11. 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(ys) B. 2. 11. (yt) B. 2. 11. (yu) B. 2. 11. (yv) B. 2. 11. (yw) B. 2. 11. (yx) B. 2. 11. (yz) B. 2. 11. (za) B. 2. 11. (zb) B. 2. 11. (zc) B. 2. 11. (zd) B. 2. 11. (ze) B. 2. 11. (zf) B. 2. 11. (zg) B. 2. 11. (zh) B. 2. 11. (zi) B. 2. 11. (zj) B. 2. 11. (zk) B. 2. 11. (zl) B. 2. 11. (zm) B. 2. 11. (zn) B. 2. 11. (zo) B. 2. 11. (zp) B. 2. 11. (zq) B. 2. 11. (zr) B. 2. 11. (zs) B. 2. 11. (zt) B. 2. 11. (zu) B. 2. 11. (zv) B. 2. 11. (zw) B. 2. 11. (zx) B. 2. 11. (zy) B. 2. 11. (zz) B. 2. 11.



then adds, 'If *Berford* (Lord *Orrey*) and the Club have a mind to have *K. George* delivered up to them he shall; there are those that will undertake it, and offer to do whatever is required. And in his (f) Letter of the 21<sup>st</sup> of July, he says, 'I can assure you, *Dorset* has but few more to take a Resolution to lay violent Hands on *K. George*; but will force a Strip put to them at pocket. It is not the Pretender's Interest, but you can't do so always, an ill Precedent is dangerous.'

By such and villainous Design expressed by these two Paragraphs, and by the Explication from your Committee, who are sensible the House cannot but read them with the utmost Horror and Indignation.

In consequence of himself in these Letters as knowing the Men, who had been resolved to lay violent Hands on the sacred Person of his Majesty, and as he himself is engaged in this execrable Design, as to lay on his Hands to the Club defence, his Majesty should be delivered up into their Hands; And in another Letter difficulties are set out of any Conduct or Remedy for the Crime, but merely fear the same Business should be retained on the Pretender: Yet this Man still continues his hardened and obstinate, as to renew his Guilt by refusing to make the full Discovery of his Accomplices, or to give this only Reputation and Assistance he is capable of, to a Country which he has been labouring to divide in the greatest Civilian.

He afterwards (g) says, 'That this there should be a Rising in most Parts, if the Club is best in one Place, the rest will go home and be quiet for some Years more.'

And next (h) Letter is of the 21<sup>st</sup> of July. In this he says, 'That *Berford* and the Club think themselves lighted by the Recent and Ministry of France; and conceive, that the Regent joins with King *George* as he is bereaved on them. That he may have reason to repent it early or late; for should the Parliament be broken, and a new one called, he might find himself more embarrassed than he is aware of.' He adds, 'If the Regent does counter, they will soon bring the Low-Salt to bear; so far as is intended of it, that four or five hundred Men, and as many Arms, with 1500 L. will complete the Matter in a little Time, and give a great Opportunity to do their Duty. This Scheme, if duly and discreetly executed, will give them an Opportunity to do it. Were we sure the Regent would not interpose, we would take it in hand forthwith.'

The Committee make no doubt but the House has prevented them, in observing how exactly this Letter agrees with the (d) Accounts sent some Time before from France; that the Conspirators secluded on great Part of the King's own Forces, and only desired the Regent that he would keep himself neutral between the Pretender and his Majesty. And this Letter agrees to have been writ at the Time when *Laper*, *Brown*, *Morphy* and *Barrett* were labouring to corrupt the Officer and Soldiers of the Army. *Barrett* says, in the same Letter, 'If the Regent and Court of Spain will but ply *K. George* with large Demands, and bring the *Cue* down to *Hanover*, the Pretender will have a *Carte Blanche* from the Ministry and King *George*, wallo from all the rest of his Friends and Foes: This I take to be the full and false Way, both for the Pretender and his Well-Whithers.'

This Explication of the Pretender's getting a *Carte Blanche* from the King and Ministry, is repeated several Times in *Phaenix*'s Letters; and however extravagant and ill-founded such Suppositions were, yet the Committee cannot but observe, that his Representation appears to have met with such a Spirit of Credulity and Delusion in the Pretender and his Agents, that not long after he was with enough to entertain Hopes of conspiring with his Majesty for the Crown, by that treasonous and infamous Declaration, against which both Houses have so lately expressed their just Reformation and Abhorrence.

*Phaenix*'s next (i) Letters are of the 4<sup>th</sup> and 5<sup>th</sup> of July, 1723, in which he has the Vanity to tell *Dillon*, 'That he had been desired, by some leading Members of the then Parliament, to acquaint the Regent's Agent here, that it was now in the Power of the Regent and Spain, to send away King *George*, and to send home Mr. *Tyde* with a *blank paper*, and to give them their Advantage; that it was only to assist in the Succession *K. George* had made with them, and they would have a fair Pretence to do it.'

It appears by other Passages, that this supposed Stipulation relates to the Crown of *Gibraltar*.

He afterwards gives an Account, 'That he did, both on the 4<sup>th</sup> and 5<sup>th</sup> of July, wait on the Regent's Agent with this Message; and says, 'That it was Agent was acquainted with some of the Members of Parliament who employed him, he gave these Attention to him: But the Objections which the Regent's Agent made, appear to have been, 'That the Pretender had not the Name of a Man of great Fame or Reputation. That he had subjected no great Opinion of *Berford* and the Club; and that such a Proceedure on the Part of the Regent, would be a Violation of the *Law-Salt*. To which last *Phaenix* replied, 'That it would be so much of the same *Way* to be grateful to their use who were their Deliverers formerly.' However, *Phaenix* says, 'He conceived the Agent, that was now in the Regent's Power to make the Ministry and King *George* give the Pretender a *Carte Blanche*, and by so doing, to make the Emperor vouch up what he has now in *Phaenix*, without striking a Stroke.' And the Common People, the Country Party, and all the English Gentlemen might be brought to join with the Regent in proper Measures to do it, or, that is the Regent would but send another, they would soon bring the Pretender's *Law-Salt* to bear independent on any other.' He adds, 'This he is satisfied the Agent would write these Sentiments to his Court, and that it is *Dillon*'s Business to let the Regent see he has the same Sentiments from other People here.'

After being examined by the Committee, in relation to this Letter, (j) answered, he had frequent Access to one of the French Ministers on private Affairs: And that *Laper* required him to be acquainted with him, that he might, Whether he could find out, by the help of this Minister, whether the Regent might not be brought into *Tyde* Measures; And when *Laper* (k) deposited, that *Laper* told him, Applications had been made,

either by himself, or some other Person, to one of the French Agents here, to the Effect mentioned in *Phaenix*'s Letter. However, *Phaenix* denied his having ever spoke to that Minister in relation to State-Affairs, or his having writ any such Account to France.

The Committee, from comparing this Relation of their two Conversations with what he says in other Letters, of bringing the *Cue* down to *Hanover*, in order to oblige his Majesty to withdraw from England, observe, that the Conspirators were in intent on compassing their wicked Designs by any Means, that having failed in their Applications for foreign Assistance, they were now labouring to cause France and Spain infuse on the Retention of *Gibraltar*, to throw *Raiders* into the Hands of France, and to bring the *Cue* into *Germany*, in hopes to involve all Europe in Confusion, and thereby to pave the Way for bringing in the Pretender. In the same (l) Letter he tells *Dillon*, 'Now is the Time for the Regent and Ministry of France to serve you: If they do not, I can assure them, they may have much to repent it. For the Pretender's *Way* will find Means to get into the *Saddle*, in spite of the Min by and *K. George*.'

He adds, 'That the Army will not stand by the King and Ministry against the great Host of the English Gentlemen, the common People, and the Country Party, who are so intended against the Court, that the least Accident would surely overturn what they have been doing these seven Years past.'

He then says, 'That his Fellow-Traveler is, and has been very active since his coming from his Travels, and is more fervent than those who were in a higher Sphere. That he is spending on the Club daily, and has made many of them more active in the *Law-Salt* than they otherwise would have been. That his Wife passed the Day before last at Paris; and that he gave her a Letter for *Dillon*, his Fellow-Traveler, thinking himself inclined to it, or any other Civilities *Dillon* could show her, during her stay there.' He adds, 'Your Friends continue their Preparation, and resolve to hold themselves in readiness on Occasion.'

The Committee take Notice, that these Letters were writ just about the Time that *Laper* went down to *Norfolk*. And they think the singular Manner in which *Phaenix* writes, is in part accounted for by what Lord *North* and *Grey* (m) told *Laper*, That the Encouragement had spoiled the Project: But we shall have them again. And by his Lordship's sayings (n) he you want, something will be done: If (o) there be a Rising, you shall not want Men, or Money, or Arms. And that these Letters and Passages make it highly probable, that the Substance of *Laper*'s Scheme had not been only false, but approved of.

Newswatching the Account which *Phaenix* gives in this and other Letters, of *Laper*'s Proceedings, yet *Laper* denied that he had ever opened himself to *Phaenix*, in relation to the Pretender's Affairs, after their return from Rome; and *Phaenix* affirmed, that he only knew *Laper* by Coffee-house Acquaintance, and never conversed with him but in the Streets publicly.

*Phaenix*'s next (p) Letter is of the 23<sup>rd</sup> of July, the Original of which being stamped, and being sworn to be his own Hand-writing, the Committee think it proper to lay the Whole before the House, with the Explanation of the fictitious Names taken out of the Cypher, which is sworn to be his own Hand also.

A Messieur Digby & Paris.

Under a Blank Cover is Written.

July 26<sup>th</sup> 1723.

BY the Time this comes to hand, King *George*'s Agent will arrive here: I'm glad of it, because I hope all the Negotiations and Proceedings of the Ministry and King *George* will be laid before Parliament, which will be a Means to find him to *Hanover*. Though he thinks to bring the Country Party to approve of whatever he will propose to the Parliament, he will hardly ever bring the Court Party to do it. He intends to disfigure himself at the Expence of the Dead. This will find friends of the Pretender (q), they will boost so for Love or Money. Concerning *Perfume* are burning Projects that will disturb the Court of Spain, in case of War between Spain and the Emperor. Count *Balthazar* comes into it by King *George*'s Assistance; 'no now in Embroidery. When it comes to Perfection, I shall be Master of it. I gave a Hint on't to the Regent's Agent; he was not a little surprised at it. They must not longer make longer; if they do, the Emperor and King *George* will find Means to disturb the Court of Spain and the Ministry in France; they must hasten the Peace to prevent it.'

My Cousin, who has been in the Country this three Weeks past, came to *Town* Yesterday: He first told me of his Name, viz. that Mr. *Tyde*'s Friends will run down the Ministry and King *George* in a little Time, and bring the *Law-Salt* to bear on their own Bottom, and independent of the Regent, or any Body else. I am resolved to know nothing of their Proceedings, I am to have every Thing laid before the Parliament first, and then every Body will see we want the Pretender more than he wants us. Both Friend and I will join to any Enterprise that will be made in his Favour: Notwithstanding they ever dare offend him, if, on any Occasion, he should look almost on 'em hereafter. I intend often, the only Way to spirit them up, was to converse with 'em the *Law-Salt*, would be brought to bear against the Regent, and that by the Regent and King *George*. The Constitution they put upon this was, that the former was subtle enough to make use of the Felt of the Letter, to play the Game to his own Advantage at our Cost, and that he will govern Mr. *Tyde*, when here, as he does now King *George*. Then, or some false Imagination, gave them an uncommon Resolution; and I believe they will struggle hard for a Street in the Road of *Hanover*. 'Tis in the Regent's Power to make King *George*, the Ministry, and the Club, to give Mr. *Tyde* a *Carte Blanche*. 'Tis incumbent on you to converse with him of it. I am sure his Agent here is already, for I gave him this Morning demonstrative Proof, that King *George* obliges to support the Emperor against the French King and his Coll. and that without being less in it.

(a) C. 62. (b) C. 38. (c) C. 39. (d) A. 4. (e) C. 60. 61. (f) C. 71. (g) B. 2. (h) C. 66. 67. (i) B. 3. (j) C. 72. (k) C. 62. (l) C. 62. (m) C. 62. (n) C. 62. (o) C. 62. (p) C. 62. (q) C. 62.







The Passage makes it highly probable, that the Bishop used to receive letters from abroad directed by fictitious Names; which is still further confirmed by the following Circumstances:

(a) Cypher which *Loyd* owned he received from Sir William in the Bishop of Rochester is directed by the Name of *Tyler*.  
(b) *Loyd* declares, that as the Letter which *Kelly* showed him from Sir William's Secretary, there were Compliments to the Bishop of Rochester, by the Name of the Bishop's Letters was found one directed to Mr. *Dabry*, not among the Letters with any Name, nor dated from any Place. It was in the following Words:

SIR, FORGIVE my Silence. You easily conceive the Difficulties I am under in this Regard. I write this only to assure you of my great and unalterable Respect, and refer you to the worthy Baron for News, and for every Thing, which otherwise, I should have found time to write to you myself. I have heard nothing from you since your Letter I had about two Months ago by Mr. *Tell-fin*, to which I immediately in my Head returned my Answer. A Rumour has reached me of your having written hither since; but I can find nobody that says he has sent your Letters.

I am always, SIR,  
Your truly Obedient, and  
my humble Servant.

Your Committee observe, that *Tyler* is the Name by which *Kelly* usually writes, as appears to them from several (c) Addresses: And that as *For* is the 10th of December, 1721, N. S. and first in two or three Days after for England, as appears from the (d) Pocket-Book taken from him: And the Letter to *Dukes* seems to intimate such a Correspondence as made it unsafe to write openly, and without Disguise.

Among the Bishop's Papers was found another (e) Letter, dated *Rouen*, Nov. 19th, 1722, without any Name, and the Superscription runs off, *Worth Letter* is mentioned to be sent by an honest Gentleman; and the Writer of it desires to know how he may direct; and desires to be directed by the Name of *Worth*, as Mr. *Worth* at *Rouen*, which is probably a fictitious Designation, no Name being subscribed to the Letter. He there mentions a former Letter sent under Cover to their common Friend *So Red*. Who *So Red*, says, does not appear to your Committee; but they are not *So Red*, *Ennard* inserted in *Pinckon's* (f) Cypher, and designed by the fictitious Name of *Worth*.

Among the Bishop's Papers were likewise found two (g) Letters from *Queen Charles* *Hofland* of *Greenwich*, the Person who, as has been mentioned above, was lent to *Bishop*, to transport the late Duke of *Ormond* to *England*.

Some Letters having been intercepted, which there is good Reason to believe were from the Bishop of Rochester; and (h) one of these Letters being signed by *T. Jones*, and another (i) *T. Kingston*, your Committee will say by before the House the Evidence they have found of the Bishop's being engaged by those two Names, collected from Circumstances, which are themselves seemingly minute, and of little Consequence, were in this Reason more frankly confided by those who were obtuse in detecting *Smuggler* Papers; and put at the Time lead directly to the Discovery of the Person means by those Names.

Mrs. *Barnes* being examined before a Committee of Lords of the Council, obstinately refused to answer the last Discovery relating to *George Kelly*; but when the case, so to be asked who the knew about *George Kelly*, was before the House the Evidence they have found of the Bishop's being engaged by those two Names, collected from Circumstances, which are themselves seemingly minute, and of little Consequence, were in this Reason more frankly confided by those who were obtuse in detecting *Smuggler* Papers; and put at the Time lead directly to the Discovery of the Person means by those Names.

It appears to your Committee, by Letters intercepted between *Kelly* and an Correspondence in *France* (the Proof of which will be set forth in the sequel of this Report), that a Dog was named and hurt, was sent over to *Kelly* from *France*, so be delivered as a Present to the Person denoted by the Names of *Jones* and *Kingston*.

For in his (m) Letter to *Alford* (who is explained in *Pinckon's* Cypher to mean *Gibson*), and has been observed above to be *Dillon's* Secretary), he mentions his having received the Present, and the Accident of a Leg broken in the Voyage; and adds, "I will inform Mr. *Jones* from you to whom I know any Thing from that Quarter will be very acceptable."

In the same Paragraph he says, "Sir, *Jones* and his Wife, when the Days of Mourning are over, he will, I hope, be fit for company."

This Letter was sent on Monday the 29th of April, and *Kelly's* Lady (n) died the Week before, on Thursday the 25th of April, by his (o) Letter to *Alford*, (which Name will be understood to signify the late Lord *Mercer*) dated the 7th of May, says, "Mrs. *Alford* is in great Tribulation for poor *Harriette*, who is in a bad Way, and *Kelly's* Leg again, before it was thoroughly well: However Obligations to the Lady are as great as if he had come safe, which he has, so let her know."

Words *He* and *His* being relative to Mrs. *Alford*. Hence it is that in the sequel of the Bishop's Lady *Worth* died at the Time this Letter was sent. And this Disguise of putting *His* for *He*, is frequently used in the intercepted Letters, and is confirmed by a parallel instance lately following.

The 6th, *Dillon's* Secretary (p) writes to *Kelly*, and says, "Mrs. *Alford*, (which will be known to be General *Dillon*) prays you will console her in the Death of Mrs. *Alford*."

It appears by these Passages, that the Dog was for Mr. *Jones*, alias *Alford*: And upon *Kelly's* writing word that Mrs. *Jones* was dead, the Correspondence conclude on the Death of Mrs. *Alford*, which shows *Jones* and *Alford* to be the same, and both to be made use of to denote the Bishop.

On the 10th of May, *Alford* (who is the same with *Alford*, that is, the late Lord *Mercer*) sends a Letter to Mr. *Alford*, enclosed under Cover to *Kelly*; in which, after acknowledging the Receipt of *Alford's* Letter of the 20th of April, he adds, "I did not expect to see after to have heard of a Lady who has had since, for which I consider with you, and nothing which concerns you to me can fall touching me, in Friendship it ought. It is, therefore, becoming us, as it is our Duty, to submit with Rejoicings to what the Just and Great God thinks fit to order for us in this vain and transitory World; but you know such Things so much better than I, that I will not trouble you with saying any more upon it."

This last Paragraph seems to point out the Character and Function of the Person to whom the Letter was sent.

*Alford* adds, "I would can hope that your own Dissembler will soon give you satisfaction; which agrees with the Circumstance of the Bishop's being ill of the Great at the Time of his Wife's Death."

This Particularity, as also several others, which will be taken Notice of, as to the Bishop's being in Town or in the Country, at the respective Times mentioned in the intercepted Letters, have been actually inquired into, and it appears by a Paper marked (q) *So Red*, that these several Circumstances do exactly agree with what is mentioned in the Letters.

*Kelly* (r) writing to *Alford* (the late Lord *Mercer*), the 7th of May, says, Mrs. *Jones* is come to Town. The same Day writing to *Gibson* (*Dillon*) he says Mr. *Barnes* is now in Town; which agrees with *Jones* and *Dillon* to be the same, and agrees with the Inquiry made at that Time.

On the 10th of May, *Kelly* (r) writes to *Dillon's* Secretary, *Alford* is gone into the Country, and first we word he would be in Town on Tuesday Night, when he has desired to see us at a particular Hour, by which I conclude it may be about Business. And on Monday the 14th of May, (the Day before, it is said, *Alford* was come to Town) (s) writing to the same Person, he says, *Jones* is still in the Country, but has sent me Word he will be in Town to-morrow.

These several Circumstances, join'd to *Kelly's* Declaration, that *Kelly* had told him, the Bishop went sometimes by the Name of *Jones*, and that *George* had told him, the Bishop went by the Name of *Alford*, show, that wherever *Jones* and *Alford* are named in *Kelly's* Correspondence, the Bishop of Rochester is to be understood by those Names.

Your Committee therefore will next proceed to lay before you the Part which *Jones* or *Alford* appear to have borne in the treasonable Correspondence.

It appears by *Kelly's* (a) Pocket-Book, that *Kelly* left out for Paris on the 22d of February 1723-24, and returned to London about the 10th of April following. It appears by (y) Mrs. *Lowry's* and (z) *John Mercer's* Depositions, that he came to Mrs. *Barnes's* on Wednesday the 11th of April, at eight in the Morning, extremely fatigued, and went immediately to bed. Mrs. *Lowry* has deposed upon Oath, "That Mrs. *Barnes* told her he was then just arrived from France, and brought over Letters with him: That several of the Difficulties had been at her House to enquire after him before his Arrival, and express'd the utmost Concern for fear he should be taken." And *Alford* declared, "That he saw a great Bundle of Letters which *Kelly* brought over from France. Mrs. *Barnes* further told Mrs. *Lowry*, "That the Day after, (v. s. Thursday the 12th of April) the Bishop of Rochester sent his own Coach to fetch him, and that *Kelly* was then in the Country till Saturday the 14th." Two (aa) Depositions, inserted to this Report, show, that the Bishop of Rochester came to Town on Wednesday the 11th, and went to *Bradley* on Thursday the 12th of April.

It appears by (bb) Letter sent to *Kelly* from France by the late Lord *Mercer*, and intercepted, that on Monday the 16th of April (which was the first Post-day to France, after the Bishop had sent for *Kelly*), *Kelly* had writ to *Mercer* as Account of his Negotiations with *Alford*, and of *Alford's* Willingness to be reconciled to us, designed by the Name of *Alford*. Who *Alford* is to be reconciled to us, designed by the Name of *Alford*. In several of the Letters as a Person in ill Health, entered in the Gazette and one in whose the President's Agents at Paris place their greatest Hopes and Confidence next to *Alford*. This Reconciliation with *Alford*, *Alford* was delicious might be kept secret for some Time, that it might not be known they acted in concert.

It appears by another (cc) Letter to *Kelly* from *Dillon's* Secretary at Paris, that *Alford* had writ a mysterious Letter thither, and that *Kelly* had writ a subsequent one to *Alford* in Answer of it, which had been threat to *Dillon*.

The last (dd) Letter that was intercepted from *Kelly* himself, was dated the 2nd of April, signed *James Tyler*, (the Name he always used by the Bishop of Rochester) and directed to *London* upon, *Barnes* at *Bradley*, at which House, it is probable, he had been entertained in his last Return from Paris, which *George* is to be understood in a (ee) Letter from Mr. *Greyford*, as being formerly the Pretend'd *Banker*, and as one employed in hiring a Vessel to transport some of the Chiefs of the Conspiracy to England. In this Letter to *Gordon*, *Kelly* recommends to his Care a Packet enclosed.

This Packet was directed to Mr. *Gordon* (which will be proved to be *Dillon*), and consisted of three Letters, one to *Gordon* himself, signed *T. Jones*, another to *Alford* (which will be proved to be *Alford*), signed *T. Kingston*, a third to Mr. *Tyler* (which will be proved to be the Pretend'd *Banker*) signed 1723; which Number is found by the Depositions, to denote the proper Name of a Person beginning with the Letter *R*, in the Cypher made use of in these three Letters, the Order of which, as your Committee is inform'd, is alphabetical. All the three Letters were dated the 20th of April, and appear by the Matter to be from the same Person, which proves 1723 to be the same with *Jones* and *Alford*. The Letters to *Alford* and *Tyler* were enclosed in that to *Gordon*.

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The Person who dictated these Letters speaks of himself as being in ill Health, in great Pain, under some sad and melancholy Circumstances, which made him less capable of doing any thing regularly at that time, but which he expected would soon blow over; which agrees with the Bishop's (a) Circumstances at that time, whose Wife was extremely ill, and died five Days after; and he himself, as has been observed before, was at that time afflicted with the Gout.

The Letter to *Chiswick* is a great Part of it out of Cypher, and with the Decyphering is in the following Words:

*S I R,*  
I Ought to acknowledge in Form the several Papers I have successively received from you, if I were capable at present of doing any thing regularly, but indeed I am not, as *Hayfield* well knows, and why I am not. Some time must pass before I am as well capable of Business, as the season time you are in the Right to push the Gentlemen concerned by all Manner of Ways you can think of, to furnish, what by being hindered not supplied, has rendered the Thing unspeakable. They were desirous of having that Matter entirely in their own Management, and I am unwilling that they should have it, being always different of Success on my Part upon Interpositions of that Kind; and therefore I give me no Concern to be so fully excused from any Sort (as I was for a great while) in that trouble. As last, indeed, when the Point was found upon Trial to be more difficult than they expected, I was pressed to undertake the Matter; but to lose that I did not think it reasonable for me then to interpose, nor can I yet undertake any thing of that Kind, as being what (since some former Mismanagement wherein I was deeply concerned) I have constantly declined, hoping that I might not be altogether unuseful to the Service, if I went on to promote it in my own, that is, in another Way. I still hope so, and that a little time (which must be employed in doing nothing but soliciting Supplies) will give me Room for entering into Measures that may be somewhat more significant than those formerly taken; that I shall endeavour, being as persons perfectly used by the delinquent Measures which have been taken from several Quarters, by Persons noways equal to the Work, and at the same time not agreeing among themselves. This is all I can say as preface, but that I am with the same care Respect and Fidelity I ever was,

*S I R, your mgt. &c.*

T. Jones.

\* I have communicated the Copies of Mr. *Moorfield's* and *Yard's* Letters, which shew the (b) G. . . . . (whereof they had a Copy) were the only ones so transmitted, that I was directed, or rather thought proper for to do. Tho' I have for some time thought, that nothing of Importance should be trusted to the Post, and am resolved myself not to send that Way; yet the Death of Lord *Sunderland* makes such a Caution more indispensably necessary; for you may depend upon it, that those in Power here will now enter into Measures of more bare and Secretness, and employ all their Diligence, as well as Power, on such Occasions.

\* That Church, to whom this Letter was directed, meant General *Dillon*, is evident from the following Circumstances.

On the 13th of *May*, *Genl* (c) writing to *Kelly*, owns the Receipt of these Letters from the Bishop; but ever against the Name of *Genl* in *Phelan's* (d) Cypher, is writ *Dillon* and *Kelly* (e) informing this very Letter of *Genl's* directed to *Chiswick*. Besides which, it appears from innumerable Passages, that *Genl* and *Chiswick* must be the same with *Dilly* and *Dinwiddie*, which have been shewn at large to denote General *Dillon*.

The Bishop's Letter to *Madrigue* (who will be proved to be the late Lord *Merry*), is as follows.

To Mr. *Madrigue*.

April the 20th, 1722.

*S I R,*  
I Received from Mr. *Hayfield* (after a long Intermission of such Favours) a Letter which was very welcome to me. I have also considered carefully what he had to offer to me in particular, and entirely agree with what is proposed; I am my present Circumstances (of which he has already informed you) will not suffer me to be active soon, or even to set forward the Affairs entrusted with me in so speedy a Manner as I could wish. The best is, that as I cannot act openly, so neither is there, I think, any immediate Need of it, some time being requisite towards opening Matters, in order to fix the (f) C. . . . ., which, if halfly begun, may be attended with Surprises and other Inconveniences; but you may depend upon it, that the (g) . . . . . is committed to my Care, shall be forwarded in due Time to the Persons concerned, as also all such other (h) . . . . . as I judge, and at the Time I judge, they will best promote the Service. What is to be withheld for, is, that the Person whom I am to act with would come to Town, and his doing so will be facilitated better from your Side, than by any Thing that can be done here; by that Time he comes, I hope I shall be able to take my Part with him. I add no more now, being very unwell to say even thus much, but that I am with entire Respect and Confidence,

*S I R, &c.*

T. Illington.

\* That *Madrigue* (to whom this Letter was directed) meant *Merry*, is thus proved.

*Dillon's* Secretary (i) writes to *Kelly*, that Mr. *Lane* (ever against his Name in (k) *Phelan's* Cypher is writ Lord *Merry*) was much pleased with his last Letter, which, as has been observed before, was writ on the 18th of April.

Soon after a Person (l) writes to *Kelly*, acknowledging the Receipt of this Letter the 18th of April, and expressing his Satisfaction at *Madrigue's* Willingness to be reconciled with *Holles*; his Letter is signed 913, which Number is found by the Decyphers to denote the proper Name of a Person beginning with the Letter *M*, and *Kelly* (m) answering the Letter, directs to *Madrigue*.

(a) D. 47. 48. (b) Not decyphered. (c) E. 31. (d) C. 30. (e) E. 43. 49. (f) Not decyphered. (g) E. 30. (h) C. 25. (i) E. 31. (j) E. 40. 41. (k) Not decyphered. (l) E. 30. (m) Not decyphered. (n) E. 31. (o) E. 32. (p) E. 33. (q) E. 34. (r) E. 35. (s) E. 36. (t) E. 37. (u) E. 38. (v) E. 39. (w) E. 40. (x) E. 41. (y) E. 42. (z) E. 43. (aa) E. 44. (ab) E. 45. (ac) E. 46. (ad) E. 47. (ae) E. 48. (af) E. 49. (ag) E. 50. (ah) E. 51. (ai) E. 52. (aj) E. 53. (ak) E. 54. (al) E. 55. (am) E. 56. (an) E. 57. (ao) E. 58. (ap) E. 59. (aq) E. 60. (ar) E. 61. (as) E. 62. (at) E. 63. (au) E. 64. (av) E. 65. (aw) E. 66. (ax) E. 67. (ay) E. 68. (az) E. 69. (ba) E. 70. (bb) E. 71. (bc) E. 72. (bd) E. 73. (be) E. 74. (bf) E. 75. (bg) E. 76. (bh) E. 77. (bi) E. 78. (bj) E. 79. (bk) E. 80. (bl) E. 81. (bm) E. 82. (bn) E. 83. (bo) E. 84. (bp) E. 85. (bq) E. 86. (br) E. 87. (bs) E. 88. (bt) E. 89. (bu) E. 90. (bv) E. 91. (bw) E. 92. (bx) E. 93. (by) E. 94. (bz) E. 95. (ca) E. 96. (cb) E. 97. (cc) E. 98. (cd) E. 99. (ce) E. 100. (cf) E. 101. (cg) E. 102. (ch) E. 103. (ci) E. 104. (cj) E. 105. (ck) E. 106. (cl) E. 107. (cm) E. 108. (cn) E. 109. (co) E. 110. (cp) E. 111. (cq) E. 112. (cr) E. 113. (cs) E. 114. (ct) E. 115. (cu) E. 116. (cv) E. 117. (cw) E. 118. (cx) E. 119. (cy) E. 120. (cz) E. 121. (da) E. 122. (db) E. 123. (dc) E. 124. (dd) E. 125. (de) E. 126. (df) E. 127. (dg) E. 128. (dh) E. 129. (di) E. 130. (dj) E. 131. (dk) E. 132. (dl) E. 133. (dm) E. 134. (dn) E. 135. (do) E. 136. (dp) E. 137. (dq) E. 138. (dr) E. 139. (ds) E. 140. (dt) E. 141. (du) E. 142. (dv) E. 143. (dw) E. 144. (dx) E. 145. (dy) E. 146. (dz) E. 147. (ea) E. 148. (eb) E. 149. (ec) E. 150. (ed) E. 151. (ee) E. 152. (ef) E. 153. (eg) E. 154. (eh) E. 155. (ei) E. 156. (ej) E. 157. (ek) E. 158. (el) E. 159. (em) E. 160. (en) E. 161. (eo) E. 162. (ep) E. 163. (eq) E. 164. (er) E. 165. (es) E. 166. (et) E. 167. (eu) E. 168. (ev) E. 169. (ew) E. 170. (ex) E. 171. (ey) E. 172. (ez) E. 173. (fa) E. 174. (fb) E. 175. (fc) E. 176. (fd) E. 177. (fe) E. 178. (ff) E. 179. (fg) E. 180. (fh) E. 181. (fi) E. 182. (fj) E. 183. (fk) E. 184. (fl) E. 185. (fm) E. 186. (fn) E. 187. (fo) E. 188. (fp) E. 189. (fq) E. 190. (fr) E. 191. (fs) E. 192. (ft) E. 193. (fu) E. 194. (fv) E. 195. (fw) E. 196. (fx) E. 197. (fy) E. 198. (fz) E. 199. (ga) E. 200. (gb) E. 201. (gc) E. 202. (gd) E. 203. (ge) E. 204. (gf) E. 205. (gg) E. 206. (gh) E. 207. (gi) E. 208. (gj) E. 209. (gk) E. 210. (gl) E. 211. (gm) E. 212. (gn) E. 213. (go) E. 214. (gp) E. 215. (gq) E. 216. (gr) E. 217. (gs) E. 218. (gt) E. 219. (gu) E. 220. (gv) E. 221. (gw) E. 222. (gx) E. 223. (gy) E. 224. (gz) E. 225. (ha) E. 226. (hb) E. 227. (hc) E. 228. (hd) E. 229. (he) E. 230. (hf) E. 231. (hg) E. 232. (hh) E. 233. (hi) E. 234. (hj) E. 235. (hk) E. 236. (hl) E. 237. (hm) E. 238. (hn) E. 239. (ho) E. 240. (hp) E. 241. (hq) E. 242. (hr) E. 243. (hs) E. 244. (ht) E. 245. (hu) E. 246. (hv) E. 247. (hw) E. 248. (hx) E. 249. (hy) E. 250. (hz) E. 251. (ia) E. 252. (ib) E. 253. (ic) E. 254. (id) E. 255. (ie) E. 256. (if) E. 257. (ig) E. 258. (ih) E. 259. (ii) E. 260. (ij) E. 261. (ik) E. 262. (il) E. 263. (im) E. 264. (in) E. 265. (io) E. 266. (ip) E. 267. (iq) E. 268. (ir) E. 269. (is) E. 270. (it) E. 271. (iu) E. 272. (iv) E. 273. (iw) E. 274. (ix) E. 275. (iy) E. 276. (iz) E. 277. (ja) E. 278. (jb) E. 279. (jc) E. 280. (jd) E. 281. (je) E. 282. (jf) E. 283. (jg) E. 284. (jh) E. 285. (ji) E. 286. (jj) E. 287. (jk) E. 288. (jl) E. 289. (jm) E. 290. (jn) E. 291. (jo) E. 292. (jp) E. 293. (jq) E. 294. (jr) E. 295. (js) E. 296. (jt) E. 297. (ju) E. 298. (jv) E. 299. (jw) E. 300. (jx) E. 301. (jy) E. 302. (jz) E. 303. (ka) E. 304. (kb) E. 305. (kc) E. 306. (kd) E. 307. (ke) E. 308. (kf) E. 309. (kg) E. 310. (kh) E. 311. (ki) E. 312. (kj) E. 313. (kk) E. 314. (kl) E. 315. (km) E. 316. (kn) E. 317. (ko) E. 318. (kp) E. 319. (kq) E. 320. (kr) E. 321. (ks) E. 322. (kt) E. 323. (ku) E. 324. (kv) E. 325. (kw) E. 326. (kx) E. 327. (ky) E. 328. (kz) E. 329. (la) E. 330. (lb) E. 331. (lc) E. 332. (ld) E. 333. (le) E. 334. (lf) E. 335. (lg) E. 336. (lh) E. 337. (li) E. 338. (lj) E. 339. (lk) E. 340. (ll) E. 341. (lm) E. 342. (ln) E. 343. (lo) E. 344. (lp) E. 345. (lq) E. 346. (lr) E. 347. (ls) E. 348. (lt) E. 349. (lu) E. 350. (lv) E. 351. (lw) E. 352. (lx) E. 353. (ly) E. 354. (lz) E. 355. (ma) E. 356. (mb) E. 357. (mc) E. 358. (md) E. 359. (me) E. 360. (mf) E. 361. (mg) E. 362. (mh) E. 363. (mi) E. 364. (mj) E. 365. (mk) E. 366. (ml) E. 367. (mm) E. 368. (mn) E. 369. (mo) E. 370. (mp) E. 371. (mq) E. 372. (mr) E. 373. (ms) E. 374. (mt) E. 375. (mu) E. 376. (mv) E. 377. (mw) E. 378. (mx) E. 379. (my) E. 380. (mz) E. 381. (na) E. 382. (nb) E. 383. (nc) E. 384. (nd) E. 385. (ne) E. 386. (nf) E. 387. (ng) E. 388. (nh) E. 389. (ni) E. 390. (nj) E. 391. (nk) E. 392. (nl) E. 393. (nm) E. 394. (nn) E. 395. (no) E. 396. (np) E. 397. (nq) E. 398. (nr) E. 399. (ns) E. 400. (nt) E. 401. (nu) E. 402. (nv) E. 403. (nw) E. 404. (nx) E. 405. (ny) E. 406. (nz) E. 407. (oa) E. 408. (ob) E. 409. (oc) E. 410. (od) E. 411. (oe) E. 412. (of) E. 413. (og) E. 414. (oh) E. 415. (oi) E. 416. (oj) E. 417. (ok) E. 418. (ol) E. 419. (om) E. 420. (on) E. 421. (oo) E. 422. (op) E. 423. (oq) E. 424. (or) E. 425. (os) E. 426. (ot) E. 427. (ou) E. 428. (ov) E. 429. (ow) E. 430. (ox) E. 431. (oy) E. 432. (oz) E. 433. (pa) E. 434. (pb) E. 435. (pc) E. 436. (pd) E. 437. (pe) E. 438. (pf) E. 439. (pg) E. 440. (ph) E. 441. (pi) E. 442. (pj) E. 443. (pk) E. 444. (pl) E. 445. (pm) E. 446. (pn) E. 447. (po) E. 448. (pp) E. 449. (pq) E. 450. (pr) E. 451. (ps) E. 452. (pt) E. 453. (pu) E. 454. (pv) E. 455. (pw) E. 456. (px) E. 457. (py) E. 458. (pz) E. 459. (qa) E. 460. (qb) E. 461. (qc) E. 462. (qd) E. 463. (qe) E. 464. (qf) E. 465. (qg) E. 466. (qh) E. 467. (qi) E. 468. (qj) E. 469. (qk) E. 470. (ql) E. 471. (qm) E. 472. (qn) E. 473. (qo) E. 474. (qp) E. 475. (qq) E. 476. (qr) E. 477. (qs) E. 478. (qt) E. 479. (qu) E. 480. (qv) E. 481. (qw) E. 482. (qx) E. 483. (qy) E. 484. (qz) E. 485. (ra) E. 486. (rb) E. 487. (rc) E. 488. (rd) E. 489. (re) E. 490. (rf) E. 491. (rg) E. 492. (rh) E. 493. (ri) E. 494. (rj) E. 495. (rk) E. 496. (rl) E. 497. (rm) E. 498. (rn) E. 499. (ro) E. 500. (rp) E. 501. (rq) E. 502. (rr) E. 503. (rs) E. 504. (rt) E. 505. (ru) E. 506. (rv) E. 507. (rw) E. 508. (rx) E. 509. (ry) E. 510. (rz) E. 511. (sa) E. 512. (sb) E. 513. (sc) E. 514. (sd) E. 515. (se) E. 516. (sf) E. 517. (sg) E. 518. (sh) E. 519. (si) E. 520. (sj) E. 521. (sk) E. 522. (sl) E. 523. (sm) E. 524. (sn) E. 525. (so) E. 526. (sp) E. 527. (sq) E. 528. (sr) E. 529. (ss) E. 530. (st) E. 531. (su) E. 532. (sv) E. 533. (sw) E. 534. (sx) E. 535. (sy) E. 536. (sz) E. 537. (ta) E. 538. (tb) E. 539. (tc) E. 540. (td) E. 541. (te) E. 542. (tf) E. 543. (tg) E. 544. (th) E. 545. (ti) E. 546. (tj) E. 547. (tk) E. 548. (tl) E. 549. (tm) E. 550. (tn) E. 551. (to) E. 552. (tp) E. 553. (tq) E. 554. (tr) E. 555. (ts) E. 556. (tt) E. 557. (tu) E. 558. (tv) E. 559. (tw) E. 560. (tx) E. 561. (ty) E. 562. (tz) E. 563. (ua) E. 564. (ub) E. 565. (uc) E. 566. (ud) E. 567. (ue) E. 568. (uf) E. 569. (ug) E. 570. (uh) E. 571. (ui) E. 572. (uj) E. 573. (uk) E. 574. (ul) E. 575. (um) E. 576. (un) E. 577. (uo) E. 578. (up) E. 579. (uq) E. 580. (ur) E. 581. (us) E. 582. (ut) E. 583. (uu) E. 584. (uv) E. 585. (uw) E. 586. (ux) E. 587. (uy) E. 588. (uz) E. 589. (va) E. 590. (vb) E. 591. (vc) E. 592. (vd) E. 593. (ve) E. 594. (vf) E. 595. (vg) E. 596. (vh) E. 597. (vi) E. 598. (vj) E. 599. (vk) E. 600. (vl) E. 601. (vm) E. 602. (vn) E. 603. (vo) E. 604. (vp) E. 605. (vq) E. 606. (vr) E. 607. (vs) E. 608. (vt) E. 609. (vu) E. 610. (vv) E. 611. (vw) E. 612. (vx) E. 613. (vy) E. 614. (vz) E. 615. (wa) E. 616. (wb) E. 617. (wc) E. 618. (wd) E. 619. (we) E. 620. (wf) E. 621. (wg) E. 622. (wh) E. 623. (wi) E. 624. (wj) E. 625. (wk) E. 626. (wl) E. 627. (wm) E. 628. (wn) E. 629. (wo) E. 630. (wp) E. 631. (wq) E. 632. (wr) E. 633. (ws) E. 634. (wt) E. 635. (wu) E. 636. (wv) E. 637. (ww) E. 638. (wx) E. 639. (wy) E. 640. (wz) E. 641. (xa) E. 642. (xb) E. 643. (xc) E. 644. (xd) E. 645. (xe) E. 646. (xf) E. 647. (xg) E. 648. (xh) E. 649. (xi) E. 650. (xj) E. 651. (xk) E. 652. (xl) E. 653. (xm) E. 654. (xn) E. 655. (xo) E. 656. (xp) E. 657. (xq) E. 658. (xr) E. 659. (xs) E. 660. (xt) E. 661. (xu) E. 662. (xv) E. 663. (xw) E. 664. (xy) E. 665. (xz) E. 666. (ya) E. 667. (yb) E. 668. (yc) E. 669. (yd) E. 670. (ye) E. 671. (yf) E. 672. (yg) E. 673. (yh) E. 674. (yi) E. 675. (yj) E. 676. (yk) E. 677. (yl) E. 678. (ym) E. 679. (yn) E. 680. (yo) E. 681. (yp) E. 682. (yq) E. 683. (yr) E. 684. (ys) E. 685. (yt) E. 686. (yu) E. 687. (yv) E. 688. (yw) E. 689. (yx) E. 690. (yy) E. 691. (yz) E. 692. (za) E. 693. (zb) E. 694. (zc) E. 695. (zd) E. 696. (ze) E. 697. (zf) E. 698. (zg) E. 699. (zh) E. 700. (zi) E. 701. (zj) E. 702. (zk) E. 703. (zl) E. 704. (zm) E. 705. (zn) E. 706. (zo) E. 707. (zp) E. 708. (zq) E. 709. (zr) E. 710. (zs) E. 711. (zt) E. 712. (zu) E. 713. (zv) E. 714. (zw) E. 715. (zx) E. 716. (zy) E. 717. (zz) E. 718.

Besides which, *Madrigue* is found to be a Person, whose Position is said to be kept in England, at the very Time that a (j) Person granted to the late Lord *Merry* was kept, and is spoken of in other (k) Letters as suspected of bargaining there, with such Circumstances as fix the Person meant to be the late Lord *Merry*.

The Bishop's Letter to *Hayfield* (who will be proved to mean the Pretender), is as follows:

To Mr. Jackson, under the Great of  
M. Gordon le fils, Banquier à  
Boulogne for Mr.

*S I R,*

April the 20th, 1722.

I AM sorry to find by yours, which *Hayfield* brought, that you be so in your Circumstances on this Side so well, because that Knowledge does not, I apprehend, give you any advantageous Opinion of; however let that be as it will, 'tis not for you should be deceived, and rely on more than will be made good to you. If you push it to the right Mind, I dare say it was agreeable to your own, and that you could not but be through the Forwardness of all those unsupposed, pretending People. Notwithstanding this Opportunity is elapsed, I agree with you another may offer before the End of the Year, though you may have every way is feasible: However it became me to speak through on that Head, especially at the Time when the (a) . . . . . was drawn, which was long before it was transmitted, for it was kept long a great while, in Hopes that *Derby* might have accompanied *Worcester* and sent at last order to justify the Writer in respect to that Part; but had undertaken, than to push on any Engagement of this Kind, I shall submit to I doubt not, with entire Ability to promote the Work: Not that I will decline any proper Occasions that may offer themselves to converse, freely with the Men, and in the Manner I have been used to do, for it is sit upon all Accounts I should do so; but by title and little that *Chiswick* will cool, and make Room, I hope, for somewhat of a more solid and important Nature. I declare this in great Pain, and for the Reason, and because I am not at present in any Readiness to go further, than, shall add only my faithful Assurances of an entire and unshaken Respect for you.

R.

\* That *Hayfield* (to whom this Letter is directed) means the Pretender, appears from (a) *Phelan's* Cypher, in which, over against the Name of *Hayfield*, is writ the King; though two Names had gone before in the Cypher, over-against which is writ, King *George*.

Besides which (b), *Phelan's* Letter mentioning his and *Ligon's* Journey to *Rome*, is directed to Mr. *Hayfield*; and *Hayfield* appears from other Letters to be the same with *Madrigue*, to whom Application is made in (c) Letter from *Madrigue*, for a Patent for Knight Baronet, and for Orders to raise out of two Letters inscribed from the late Duke of *Ormonde's* Agents in *Spain*, of which Notice has been already taken. And the first Cypher is also used in Letters from *George Kelly*, and to *Dennis Kelly*. And among the Papers of the latter was found a (d) Piece of a Cypher in *George Kelly's* Hand-writing, which your Commence are informed is a Supplement to the Cypher made use of in *Yoni* and *Madrigue's* Letters.

The Chicks of the Post-Office, who opened and copied these Letters, having been given several Papers (written to be *George Kelly's* Hand-writing, have (e) deposited upon Oath, that the Letter to *Gordon*, *Jackson*, *Genl* *James Hayfield*, as well as the three Letters included in it, directed to *Chiswick*, *Madrigue* and *Hayfield*, were all, to the best of their Knowledge and Belief, writ in the same hand with these Papers; which joined to (f) *Noyes's* Informations, that *Kelly* had told him, he was employed in writing Letters for the Bishop to the Pretender's Agents abroad; that the Bishop never let him carry a list of his Hand-writing out of the Room; and that *Kelly* made use both of a numerical Cypher, and a Cypher of six letters Nature, for managing this unreasonable Correspondence, appears to be a strong Confirmation that these three Letters were dictated to *Kelly* by the Bishop, and that the Bishop is the Person denoted by the Name of *Yoni* and *Madrigue*, and by the Cypher 1378.

In what Manner these Letters were conveyed to *Paris*, will be observed in that Part of the Report which relates to *Kelly*. The Correspondence at *Paris* (g) owns the Receipt of the Packet from their *Caslin* *Yoni*, and on the 7th of *May*, *Kelly* (h) writes *Dillon* Word, that *Dillon* is glad to hear his Letters come safe, and writes by next to be *Dillon's* Satisfaction.

Your Committee having thus laid before you the Grounds they have been convinced, that these three Letters were sent from the Bishop of *Down* to General *Dillon*, the late Lord *Merry*, and the Pretender; they think it their Duty to make some Observations on the Contents of them.

They observe from his Letter to *Dillon*, that he has contrived a gross Treachery and Familiarity with a professed *Roman* Catholic, who appeared openly in Arms against the late King *William* in *Ireland*, and being obliged to leave that Country so long ago as the Captivation of *Limerick* has ever since adhered to the same Cause in foreign Parts, and is at present more active and industrious than any other of the Pretender's Agents in exciting a Rebellion in these Kingdoms. He is at this Time a Lieutenant General, and has the Command of one of the *Irish* Regiments of the *French* Service.



Your Committee observe, That as the different Professions of these two Parties could lay no sort of Foundation for any Intimacy or Intercourse between them, so the long Absence of General Dilke makes it highly probable, that their Acquaintance could not be connected before his leaving the Kingdom; and that it can only have proceeded from their being long and confidential in the common Support of the same wicked Cause. Yet their Intimacy in such, that the Bishop acknowledges the Receipt of several Papers from Dilke, together with Directions of communicating which the Bishop owns he employ'd as far as he judg'd it proper for Service. Some of these Papers appear to have been from the late Duke of Ormond, who is attainted; and others probably from the Pretender, whom he has in often oblig'd.

He advises Dilke to prefer the following Supplies; and owns he has declared to subscribe that Province himself, but that he had hitherto refused to do so, from such Reflections as should naturally have arisen in mind of one, of his Character and Fidelity, but merely on account of secret ill Success and Mismanagement, in which he owns he had deeply concern'd.

The aforesaid advises Dilke to use the same Caution which he himself professes, of not trusting any thing of Importance to the Post, endeavouring to get within the Shelter and Safeguard of the Laws for subverting the present Constitution.

The said Caution, which (as *Novus* said *Kelly* told him) the Bishop made use of extremely careful, so not to let even the Man he most trust, have any Intimacy of his own Hand-writing; and fears that he is miserably foolish, not to avoid the Guilt of Treason, but only to get the Punishment due to it, by leaving himself from the Danger of Conviction.

Another of his Letters is to the late Lord *Murray*, who for lately appear'd again against his Majesty, and has since had a Post of the greatest Confidence and Trust made the Pretender.

In this Letter he owns the Receipt of one from *Mary* by *Kelly*, together with several Intimations, which, to cut off all excuse of Surprize or Ignorance, he says he carefully consider'd, and yet entirely agreed to.

He then mentions his present bad Circumstances; but comforts himself, as they will not permit him seen to act openly, so neither is there, he thinks, any immediate Occasion for it, since Time being necessary to ripening Matters. So that when a proper Opportunity should offer'd, the Matter was to have been thrown off, and then he was only to have appear'd the Cause, which he is hitherto supported only by Dilke.

The other Letter of the Bishop's is to the Pretender himself, in defence of that Line which makes the binding any Correspondence with him, as traitorous, High Treason. In this Letter he owns the Receipt of one from the Pretender; and to show how well he detested that Cause, he himself, who best knows the Thoughts of his own Heart, says, that if the Pretender quitted at his right Mind, he dares say it is equal to the Pretender's own.

He then encourages the Pretender to hope for a second Opportunity, 'not every Way so favourable as the first, which was elaps'd.

This favourable Opportunity appears to have been that of the Election, and your Committee cannot but observe, that the two most notable Actions of any throughout the Kingdom, were that of *Wilmington*, where under the immediate influence of the Bishop of *Rockingham*, and that of *Greenwich*, which appears by this Report to have been animating by *Gerrit*, an Agent of the Bishop's, and one employ'd by him in managing his treasonable Correspondence.

He afterwards takes to himself the Merit of some Writing, which he had drawn up and transmitted to the Pretender, after it had first pass'd the View and Approbation of the Persons concern'd: 'That he says it had been to get back a great while, in hopes that *Desh* might have accomplished *Ward*. Which again shows his treasonable Intentions to have been the Result of mature Deliberation; and that tho' he had hitherto said in Words, yet other Acts of Treason were what he hoped for, and was aiming at.

As yet as God should excuse him to his Health, he promises to do it towards the Prosecution of his Treason, and in the mean time offers leave to withdraw himself seemingly from any Engagements of that kind, that he might return with greater Zeal and Activity to destroy this Church and State, by placing a Popish Pretender on the Throne, in stead of the most sacred Cause so frequently taken by him.

Your Committee will now proceed to show what farther Part the Bishop appears to have had in the treasonable Correspondence and Negotiations spread on with the Pretender's Agents in France.

On the 11th of *May*, *Dilke* writes *Albany's* (a) Letter first to *Madame* (b) the 20th of *April*. This was indic'd in a Letter to *Kelly*. The substance of the Answer is so considerable with *Albany* on his side, and to express great Satisfaction on finding him in the same Sentiments with *Mary*, in Relation to his old Friend and Acquaintance (*Rock*); and in another (c) Letter to *Kelly*, he lets *Albany* know how agreeable such Reconciliation would be to *Farmer*, and how much to *Farmer's* Interest.

Your Committee for Reason to believe, from Passages in several of the Letters, that *Farmer* means the Pretender.

It has been observed above, one of the Periods of Time fixed by the Designers for putting their Design in execution, was the Beginning of *May*, 1722.

On the 11th of *May*, *Dilke's* Secretary (d) writes to *Kelly*, 'that Mr. *Kelly* cannot take a better Time to have himself firm'd with an easy *Salute*, there being a Number of Soldiers idle in France at present, who are of War would be too very busy there would be no coming at them.' This is explain'd by what (e) *Novus* said, that as *Kelly's* Cypher and Soldiers flood for *John* *Barth*, tho' he did not know any Letters had been intercepted where that Term was made use of; and in *Phaulton's* (f) Cypher *Soldiers* stands for *Regiments*, and *Girt* for one hundred Men.

On the 26 of *May*, *Dilke* himself (g) acknowledges the Receipt of his Cousin *John's* Letters of the 20th of *April*, and 'expresses much Concern for that Lady's ill State of Health, being much afraid his own fall in his Favour.'

On the 7th of *May*, *Kelly* (h) writes to *Madame* (i) 'that he had communicated his Letter to Mr. *John*, and that Mr. *John* desired a Letter from *Madame* or *Farmer* (the Pretender) to *Hutch*, to bring him to Town, without which it would be impossible for them to do Business together. That *John* finds *Anybody* and *Company* very loath to be any way concern'd, having no Opinion of the present Hands; however that it is still necessary to make the most of them.'

Who is meant by *Anybody* and *Company* does not appear to the Considerers.

On the 9th of *May*, *Dilke's* Secretary (k) writes to *Kelly*, 'That if this Post had not brought an Addition of three to the list of my formerly come from *Repay*, it is easy for Mr. *John* to see what is still wanting for the Passable he intends to make.' Who is meant by *Repay* is not certain, but in the following Part of this Report there will appear Grounds of a probable Conjecture.

This Passage refers to a Bill of Exchange (of six thousand Pounds possibly) sent over to *Glad*, and thence to *Paris* the Pretender's Banker in *Paris*, on the 10th of *April*, the Receipt of which is acknowledged in several Letters both to (j) *George Kelly* and (k) *Denis Kelly*. The Paragraph, which says, 'That if there were not so much, before the fix of *Repay*, it is easy for Mr. *John* to see what is still wanting for the Passable he intends to make.' Shows plainly, that *John* was at least privy to this Remittance: which agrees with what *Penier* (l) has deposited upon Oath, that he was told by *Steele*, among other Particulars relating to the Conspiracy, that a large Contribution had been raised and put under the Management of the Bishop of *Rockingham*, which was called their military Cash.

On the 10th of *May*, (three Days after the Encampment) (m) *Kelly* writes to *Dilke's* Secretary, 'That it was reported the King had advised lately related to put off his Journey, and intended to sit out early next Month, and that if they could then campaign *Barrel* enough, the sooner the War comes, he believes, the better. He adds, that *John* promises to be a good Customer, and that he hopes *Hutch* and *John* will give them the finishing Stroke.' The time of Year in which this Letter was sent, and the absurd Suppositions of its being more difficult to find *Barrel* than *Wine*, are sufficiently that these Words are not to be taken in their literal Sense.

Your Committee are inform'd, that *Wine* was explain'd by *Novus* to mean *French*, that he had not been told that any such Word had been made use of in these Letters, but had been asked any Question about it, and in (n) *Phaulton's* Cypher, *Barrel* is explain'd *Army*, and *Wine*, are explain'd *Money*.

On the 10th of *May* *Dilke's* Secretary (o) writes to *Kelly*, 'That he is assur'd by good Hands, *Hutch* and *John* are the best able to adjust his particular Concerns; that he does not question their good Disposition, and that doing it timely will be a double Merit.'

On the 12th of *May*, *Kelly* was taken into Custody, about the 7th of *June* he was admitted to Bail, and on the 12th he (p) writes an Account of his Examination to one *Gerrit*, whom your Committee believe to be Sir *John D'Ugon*, whom *Kelly* (q) owned to be employ'd by *Dilke* in winning for him. In this Letter *Kelly* says, 'He was closely questioned about a little Dog he got from France, and about five or six cast Names, which were *Albany*, *John*, *Cass*, *Hutch*, *Stewart* and *Hutch*, and that whoever *Albany* is, he was the Person chiefly struck at.'

On the 18th of *June* (r) he writes to *Dilke*, 'That it is absolutely necessary to make no more use of their present Account-Book, since that have got Part, may by the same Method have got the whole; and that it will be highly improper for him to meddle with *Bullion*, as well for some Time.'

From the Time forward your Committee observe, that the Names of *John* and *Albany* are no more heard of in the intercepted Correspondence; neither does *Kelly* frequently write Letters of great Business, but in his head *Thomas Gerrit*, Clerk, takes up the Management of the Bishop's Correspondence.

The Letters from *Gerrit* are signed, and those to him directed by the Name of *George Williams*, and *Mrs. Harris*, to whose House they were directed, having been examined before some Lords of the Council, (s) has deposited on Oath, that *Gerrit* desired him to take in Letters to *Dilke*, and that he delivered into so *Dilke's* Secretary to open them before he. And in the (t) Cypher given among *Dilke's* Papers in *George Kelly's* Hand-writing, Mr. *Gerrit* is design'd by the following Names of *Thomas and Trevor*, who appear, by comparing several Passages in the Letters, to mean the same Person with *George Williams*.

From the Time of *George Kelly's* being left taken up, the Bishop of *Rockingham* is denoted by the Names of *Rig* and *Wigley*, as will appear from the following Circumstances.

On the 30th of *August*, *Kelly* (u) writes to *Dilke* a long Letter, which contains the Particulars of the Bishop's being taken into Custody, examined and committed. On the 14th of *September* *Dilke's* Secretary (v) writes to *Kelly*, 'That his Letter on the 30th of *August* came safe, and that the Particular he gave of Mr. *Rig* and *Wigley* were very acceptable to *Dilke*, whose Concern for a true and worthy Friend and Relation cannot be doubted, and a long Desire to know her entirely clear'd of *Dilke's* Implication.' In the same Letter he desires to know what is become of *Gerrit*.

That *Dilke* denotes the Bishop, is further confirm'd by these Particulars. *Kelly* in his first (y) Letter after his Imprisonment, writes word to *Gerrit*, 'All I can do now, will be only to deliver to your Cousin *Rig* my Good-bye that you can find by private Hands: He is determin'd not to reveal them any other Way, and indeed I cannot say he is in the wrong, how far this late *Adieu* may affect him, I cannot tell.'

(a) D. 74. (b) D. 12. (c) D. 17. (d) E. 10. (e) C. 35. (f) E. 18. (g) E. 43. (h) E. 40. (i) E. 10. (j) F. 39. 21. (k) D. 10. (l) D. 44. (m) C. 35. (n) E. 46. (o) E. 40. (p) E. 26. (q) E. 40. (r) E. 40. (s) D. 4. (t) E. 43. 21. (u) D. 46. (v) E. 40.



Now, since it appears that Kelly was formerly employed in conveying Letters to and from the Bishop (which are often called *Grads* in the intercepted Correspondence) since the Bishop himself had defined in his Letter to Dilke, that no more Letter of Consequence might be trusted to the Post; and since Kelly's Examination about the Dog, could afford to see but the Bishop, it may justly be concluded that Kelly and the Bishop are the same.

That *Wylde* is the Bishop will appear from the following Circumstances:

On the 7th of *June*, *Dilke's* Secretary (a) writes to *Corey*, and acknowledges the Receipt of a Letter from him of the 31st of *May* (which was from after Kelly's being taken up), and also expressing great Satisfaction. \* That the late Rumours of a Plot had not occasioned a total Interruption of Commerce, are obliged any of their Correspondents to go aside (b) to add, \* That *Dilke* desire to be most kindly remembered to his good Friend Mr. *Wylde*, for whom he is in the greatest Concern, on account of a Story that his Clerk had been laid up for *Dilke*, but that he hopes *Corey's* next Letter will put him at full Ease in this Matter.

This plainly has Reference to Kelly's being taken up; and his relation of *Corey's* to the Bishop has been fully explained by what goes before.

On the 14th of *June*, *Corey* (c) writes to *Dilke's* Secretary, and endeavors to put matters at full Ease, in relation to Mr. *Wylde*, by telling him, \* That Mr. *Wylde* is in the Country, that he has been two Days ago; that he is perfectly well, and as easy in all his Affairs as any Man alive, and very much *Dilke's* humble Servant. It appears by *Depositions* (e) annexed to this Report, that the Bishop was in the Country at that Time.

On the 14th of *July*, *Dilke* (d) writes to *Wylde* under Cover to *Corey*, and desires he will assist one *Stewart* (sent over from *France* expects) to receive his Commands.

On the 16th of *July*, *Corey* (f) writes Word that *Rye* and *Silo* had been lately together; and that before they met, *Rye* sent to him to know how *Silo* stood with *Dilke* and his Partners.

On the same Day, *Steady* (who appears by the Matter of his Letter to be the same with *Stewart*) writes (g) to *Dilke*, \* That he had been with the Correspondent, to whom the Letter of Credit was sent, and had put it in his hands, in his Arrack Affair. On the 30th of *July*, *Corey* writes (h) word, he had the Honour of introducing *Steady* to Mr. *Wylde*, and mentions the Arrack Affair, of which notice will be taken in its Place.

From these Passages it appears, that *Wylde* (the Name made use of by *Corey*) means the last word *Rye* (made use of by Kelly) which will be shown before the Bishop's *Resolves*.

*Rye* therefore, and *Wylde*, being made use of to denote the Bishop, it remains to be considered what Part *Rye* or *Wylde* appear to bear in the Sequel of the intercepted Correspondence.

It appears by the (i) Letter from *Dilke's* Secretary of the 7th of *June*, that they apprehended in general, on Kelly's being taken up, that some of their Correspondents would be obliged to go aside (b) but that their greatest Fears were for Mr. *Wylde*, whose Intimacy with Kelly was such, that Kelly is styled his Clerk, which is no improper Name for one that kept the Ciphers, which are styled throughout the intercepted Letters, *Books of Accounts*, and in *Corey's* Cipher are called *Records*. If Kelly had had no Secret to reveal, the Pain for Mr. *Wylde*, and the Fear of other Correspondents going aside, would not have been so considerable.

On the 14th of *June*, (j) *Corey* writes them at ease in relation to *Wylde*, who was, he says, as easy in his Affairs as any Man alive: Which might be the Case, Kelly having burnt his Papers, being balked out, and at Liberty to assure his Friends that the Lords could get nothing out of him at his Examination, where he strenuously denied his having ever heard of the Names of *John* or *Magnum*.

On the 14th of *June*, (k) Kelly feels his Friends at Paris an Account of his late Misfortune; and after complaining of their neglect, in not helping him out of his Affairs, and intimating that such Usage might have provoked a passionate Man to betray their Secrets; he says, your old Friend *Rye*, indeed, offered all that could be expected from the poor Man. This Passage gives pretty plainly, that *Rye* was one of those whose Secrets it was in Kelly's power to have betrayed; and who therefore thought himself principally concerned to keep Kelly in good Temper, by all possible Offers of Assistance.

Kelly in his next (l) Letter of the 13th of *June*, says, \* The Occasion of my Misfortune I will tell at No-body's Door in particular; the year said *Friend Rye* seems to believe, it has rather proceeded from my own weakness than any real Enmity. And as his Conjecture lies on this side, you may easily guess the Point it tends to. This Passage shows that the Discoveries made, were known by *Rye* to be well founded, since no one could be led to suspect, that *misinformation* entirely false should proceed from some Friend entirely in the Secret: Besides, it shows *Rye* his Friends, in whose Power it was to betray him; and that those Friends were known to the Correspondents in *France*, since Kelly says, they are able to guess who it is that *Rye* suspects to be false. This is a farther Argument, that *Rye* had Friends on the other side of the Water, in whose Power it was to tell, to have betrayed the Secret.

Kelly then tells *Dilke*, \* That it is absolutely necessary to make no more use of their present Account-Book, since they that know you best, may by the time Method has got the best of it. This is a direct Confession, that the Names of *John* and *Magnum*, and others on which Kelly was questioned, were really a Part of the secret in use between him and his Correspondent in *France*: And as *Rye* used Word that *Wylde* was the Person principally struck at, and was very well by Mrs. *Barnes's* Confession about the Dog, which I have observed to bear it amounts to a Confession, that the *Confession* of the Names of *Magnum* was true. He then adds, \* All that lies in my Power now, will be to deliver to you *Corey* Kelly any City you can find to receive his Hands, he being determined not to receive them any other way. So that by private Means *Rye* was still willing to receive them.

He then adds, \* If you find it necessary to be married up, as before to him, you cannot do me a greater Service, than to tell you the Year it is against my Opinion, and I shall not be any longer in the Country, that way. This shows what *Dilke*, as he has already said, is the same time explains in *Corey's* notice to be given to a man, Kelly Bishop's Correspondent since the seizure.

Kelly adds, \* That he does not know how far the *Book of Accounts* goes; since the receiving a Dog from *France*, or being by a fictitious Name, could not otherwise have afforded him.

On the 16th of *July*, *Corey* writes a long (m) Letter about some of *Wylde's* Opinion of them, as also that of *Frank*. What *Corey* means *Wylde* does not appear, neither is it certain who *Frank* is, but is (n) spoke of as being in high Repute with *Wylde*.

On the 16th of *August*, *Dilke* (o) writes to *Corey*, \* That he cannot fly to a mere false cut Judge than to *Wylde* about his Concern with *Frank*. And he often repeats, \* That he makes a most particular use of Mr. *Wylde's* Judgment; and that he relies entirely on *Wylde's* Friendship and Advice; and other Expressions of the like nature.

On the 14th of *July*, *Dilke* writes a (p) Letter to *Wylde* at *St. Germain* to *Corey*, in the following Words:

To Mrs. *Widdow*, married to Mr. *George Williams*, at Mrs. *Hathor*, near the St. *Bartholomew's* Hospital.

Dear Madam, Saturday 25 July, 1720

I Cannot on any reasonable Grounds complain of your Silence, as long it appears, because I am informed of the Situation of your Health, and the Concerns your Family are in, by Baskinets and others. Since, Permits me, however, to fulfil a part of my Duty in performing you my best Regards, and unfeigned Attachment to you and yours. I wish thus may find you for recovery from past Misfortunes, and you may be once more in a Humour of affording me a comfortable Visit. I have all the while I bought lying by, and I intend it shall remain until you advance of the proper Time to dispose of it: Being fully assured, that as the slippery Age we live in, I cannot count on better than you. I hear nothing, as you are stuck with infinitely as soon to a good husband, by Mr. *Wylde*, a noble and able Management, from whence I should be glad to be in such a Letter in referring to. Still my Lights as this distance can be but very imperfect. Thanks Dear Madam, I will earnestly pray your Discharge, when you find sure to grant me this Favour, as also of forgiving this Trouble, which I offer amidst in any manner I can be of Service to you. A few Acquaintances of yours I converse with in their Parts, and rely, as I do, on your friendly Advice in most particular, next about their Concerns in the Funds. They desire you will be pleased to direct Mr. *Stewart* to receive your Commands, who is directed to return you and explain from Paragraphs ten, fifteen for a Letter, I mean to be very ready at Bedstead, and will they your Orders possible.

By, I am, with the greatest Esteem and Sincerity, Dear Madam,

Your most humble, and most Obedient Servant, Dilke

On the 16th of *July*, *Dilke* (q) writes word to *France*, that he arrived in Town the Night before; that he had been to wait on *Corey*, and leaving much to know how the Fall of Success affected his Friends.

On the 20th of *July*, Kelly (r) writes to *Dilke's* Secretary, \* That he and *Silo* had been lately to other, and that before they met, *Rye* sent to him, to know if *Silo* stood well with *Dilke* and Partners. It adds, \* That *Rye* still seems in pursuit of his Alliance, if he can get the better of his opposers; and that *Rye* went into the Country, at *Silo's* after *Silo* and he had been together. It appears by (s) a *Deposition* is made to this Report, that the *Steady* came to Town on the 19th, and returned to *Brandy* on the 21st of *July*.

On the same Day that Kelly writes, *Steady* (who is the same with *Stewart*) writes (t) to *Dilke*, \* I have been with your old Acquaintance to whom the Letter of Credit was sent, who has partly returned my Demands, to promise to supply me with your Directions. He then adds, \* I am now in your Account of what Product may be hoped for from the Publick Funds.

Then follows a Paragraph, a false few Letters, which are in Copy to your Correspondent in relation to, in fact an early and dishonest, in any one that reads it, may with the least Attention discover it. In this Paragraph, instead of saying and about the funds, he says (u) *Dilke*, \* That they are certainly better off by some one entirely on the battle who has given such Light into all their Affairs, that the world are Circumstances are perfectly known to each, that the more he may know him, as he is required, to be a good friend to be conversant with, at Paris, without accepting any one.

The Paragraph explains in full what is meant by *Silo* and *Frank*, and it is remarkable, that at *Wylde's* Cipher, *Steady* is placed *Steady*. The owning chain, has discovered by some one else, *Corey*, who there was a Secret, and that the Discoveries of the Government were well founded.

He then adds, \* I have partly perused with the Correspondent (Wylde) to undertake what he had been refused against, which is the causing *Arrest*, which cannot fail, *Corey* is the Cause. And at the 23rd of *July*, *Corey* writes to *Dilke* in the following Words:

I had the Honour of introducing Mr. *Steady* to Mr. *Wylde*, who received him in the best manner, and showed him of his Readiness to help him in what he desired. Mr. *Steady* was much pleased with him, and we engaged him to follow in his Arrack Affair, which was to be at the same time to him, and Mr. *Wylde* was much obliged to him, because in the Effect of all the Commencement of the same.

(a) D. 75. (b) D. 76. (c) D. 77. (d) D. 78. (e) D. 79. (f) D. 80. (g) D. 81. (h) D. 82. (i) D. 83. (j) D. 84. (k) D. 85. (l) D. 86. (m) D. 87. (n) D. 88. (o) D. 89. (p) D. 90. (q) D. 91. (r) D. 92. (s) D. 93. (t) D. 94. (u) D. 95.



to relieve him in the Cafe. And as Mr. W. would do it effectually, if engaged in it, Mr. Stanley desires me to beg the Favour of you, to request the Favour of Mr. W. in a Letter from you to Mr. Stanley, which he is sure would fortify the good Inclinations Mr. W. has already to serve him, and effectually engage him in the Thing."

The Original of this (a) Letter being stopped, &c. as your Committee informed, in Greville's own Hand-writing.

What is meant by their mysterious Palings about *Druck*, must be left to the Conjecture of the House.

If this be compared with the Bishop's (4) Letter to Dillie, and with (4) *Fanny's* Deposition, it is not improbable that by *Druck* may be meant Contributions of Money.

But whatever is meant by it, the Committee observe, that it was a Part of the greatest Importance to the Conspirators, since it was thought necessary to be laboured by a Person sent from *France* on purpose; and the Bishop's Reluctance to come into it argues it to have been something very dangerous, and beyond the ordinary Lengths of his Compliance.

And they observe that the principal Direction of the Conspiracy, under the Disguise of *Books*, *Manuscripts* and *Druck*, is attributed to the Bishop's *French* men, on which, it is often said, they do extremely well. Your Committee having thus laid before you the principal Blunders in the intercepted Correspondence, that relate to the Bishop of *Bayeux* sent immediately, will now proceed to state to you what they find in the said Correspondence, relating to *George Kelly*, who, as has been shewn before, acted so much under the Obedience and Influence of the Bishop, that it cannot be supposed he would take any Step of Consequence in an Affair of this Nature, without the Bishop's being at least made privy to it.

The Committee farther repeating what was mentioned before, about the Heads of Memorials to the Regent, brought by *Kelly* to *Nogues*, but they find some further Particulars (4) in *Nogues's* Papers, relating to *Kelly* also.

\* That *Kelly* had owned to him his having been formerly at *Avignon* while the Pretender was there; that at his Return from *France* last Winter he brought over several Papers and Letters, and among the rest one in French, in the Hand-writing of *Dillon's* Secretary, in which, *Kelly* is chiefly offered to Cardinal *Da Bois*, proving that the *gloshing* the *House of Stuart* as the *Throne of England*, *personally* is that of *Hanover*, is the real *Throne of the Crown of France*, or to this Effect. That this Piece was thought to *Nogues* to be translated, which being written by a Papist, and giving much on the Advantage that would accrue to Popery, *Nogues* advised against publishing it.

\* That *Kelly* told him at other Times, that one Hundred Thousand Pounds, say fifty Thousand Pounds would be sufficient for bringing in the Pretender, and that he would warrant that Sum would be found.

\* That whenever there happen'd it to be a Stand made for the Pretender, great Numbers of Volunteers from *France* would appear for him; which agrees with the Account first from thence, and with the (4) Letter from *Dillon's* Secretary about *leaving* *England*, which *Kelly* explained to *Nogues* in his boldness.

*Nogues* further said, \* That *Kelly* proposed to him to go over to *France*, and to settle in Lord *Levesque's* Family, where he said he might be of Service, and promised to make his Reception easy. And your Committee observe, that the very Time when *Nogues* was taken going to *France*, *Kelly* (1) sent to *Dillon's* Secretary, \* That he would from his young Fellow, whom he had mentioned to him some Time before, and that he might rely on his Hospitality.

*Nogues* further declared, \* That *Kelly* his Fellow-Traveller (now in a Culberty), lodging in the same House with *Kelly*, when *Kelly* was last taken up, burnt a Bundle of Writings he had that Day received from *Kelly*; \* That *Malher* (formerly Servant to *Mrs. Baran*), who waited on *Kelly* at his Lodgings, (2) has depared, that this *Nogues*, *John Plunkett* (now in *Calicut*), *Corie* and *Dennis Kelly*, often visited *Kelly* in his House.

As *George Kelly* is frequently designed by a great Variety of fictitious Names in the intercepted Correspondence, the Committee think it proper first to apprise the House, what Reason there is to affect that those Names do really belong to *Kelly*, and then to show the Nature and Import of the Correspondence carried on under those Names.

It appears to your Committee, that since the Beginning of April 1723. (the Time of *Kelly's* last Return from *France*) a great Number of Letters going to *France* were by Order of the Government opened, and Copies of them taken; and that several of those Letters, tho' signed by different Names, were (4) observed by the Clerks who copied them, to be all in the same Hand-writing, and (5) one of the Originals having been stopped for the Import of the Hand, and having been shewn to *John Malher*, he has (4) depared upon Oath, that he had often from *George Kelly* write, and that he believes it to be his Hand. (5) These other Papers, seized at *Mrs. Baran's*, having been shewn to *Malher*, he has shewn them severally to *Kelly's* Writing, and the same three Papers having been shewn to the Clerks at the Post-Office, they have sworn, That in the handwriting and Belief, as well the original Letters stopped, as the copies were taken of, which were signed, some of them *John Kelly*, others *Hayfield*, *St. G. H.* and *Widdie*, were all in the same Hand with those three Papers.

\* His general Proof runs several of the Names to belong to *Kelly*, and remarkable, that if any one of the Names above-mentioned be allowed to belong to *Kelly*, all the rest by which he signs, or is directed to, may be seized of his Correspondence, be it now belong to the same Person. But your Committee further observe, that the Insufficiency in Individual Name being in it attended with false private Post, which determines it to belong to him; of which Notice will be taken as the Names are mentioned.

It has been already clearly, that he came from *France* about the Ninth Month of December, N. S. 1721. and that (a) Letter was found among

the Bishop's Papers, dated the 16th of December, in which Mention is made of a Letter received by *John Kelly*, and an Answer returned some Time before in *John Kelly's* Hand.

*Nogues* (4) declared, that the said Message to the Regent, which *Kelly* employed him to deliver, was in *De la Motte* 1718, and that it contained a Demand of five Thousand Livres for the Assistance of the Conspirators. In February following *St. Louis* went to *France*, and towards the End of April, the Conspirators (4) assisted *Nogues* in (5) Accounts, that appeared Apocryphal has been made to the Regent for such a Body of Forces.

The Bishop in his (4) Letters (sent from after *Kelly's* Return from *France*) acknowledges the Regent of a Letter, and verbal Instructions from *Alber*, by *Hayfield*, and of a Letter from the Pretender by the same Hand, and mentions *Hayfield* as having had private Unfalsity for *Bedford*.

But the Letters signed *Hayfield*, which were seized at the Post-Office, are (4) sworn to have been in the first Hand with other Papers which are found to be *Kelly's* Hand-writing. And it appears by a (5) Letter from *Alber* to *Hayfield*, that he was the Person to whom the Day was first for *Alber* to write, which *St. Louis* had to *Kelly*, and a certain *Nogues's* Information, that *Kelly* received Letters directed by the Name of *Alber* to him; And it appears, that he not only brought over Letters from *France*, but also to what was told (5) *Mrs. Lezard* by *Mrs. Baran*, and conveyed by *Nogues*; but that he was studied with a Letter to the Bishop from *John Kelly* the Name made use of for the Pretender in (4) *Plunkett's* Papers; which *Cypher* is a evident *Kelly* was no Stranger so, since he makes use of several other (5) Names found to that *Cypher*, to denote the very same Person that are there expressed and defined by those Names.

On the twenty-fifth of April, *Dillon's* (2) Secretary writes to *John Kelly* (which will be found to be another of *Kelly's* Names), congratulating his safe Return, and tells him, \* That his first Letter was very pleasing to *Mrs. Lezard* (which is explained *Lord Alber* in *Plunkett's* Papers), who waited with much Impudence for those of *Alber*, hoping so to receive a more particular Account of his Bills, which he daily becomes more pressed for, the Prospect of a good Vintage increasing by late Showers which had dropped there, and raised the Spirit of the Labourers. He adds, that it is immemorial plain, that on Advances of ready Money, good Burgundy may be procured.

He afterwards tells him, \* That *Dillon* wishes the Money which *Kelly* mentioned in *Cypher's* Hands, should be equally divided between *Alber* and the Pretender. When *Chen* is, does not appear to the Committee; but they are Ready to believe, from Passages in other Letters, that *Alber* means the late Duke of *Ormond*.

He then tells *Kelly*, \* That *Forner* and *Forner* are well, and that *Mrs. Hayfield* because so very sweetly her was distressed, and is on return.

This Passage shows that *Forner* means the Pretender, it being well known that *Mrs. Hayfield* was Native to the Pretender's Child, and was on her Return to England about that Time.

From this Letter your Committee observe, that *Kelly* was employed by *Alber* and *Dillon*, in soliciting Supplies for the Service of the Conspirators; and that he had acquainted them of a Sum of Money lodged in the Hands of one, whom they call *Cypher*, which they advised should be equally divided between the Pretender and *Ormond*. Whether *Kelly* was considerable enough to have this Advice from him for his own Government and Discharge, or was only to be the Channel for conveying it to some other Person of greater Diffusion, is left to the Consideration of the House.

On the twenty-third of April (as has been observed above) *Kelly*, from the Bishop's Packet of Letters under Cover to *Cardinal de Boulogne*, with (a) Orders to him to deliver it to a tall black Man, who would come call on him for it.

This Person is in other Letters called *Crow*; and appears to your Committee by several concurrent Proofs, to be *James Tuck*, an Irish Papist, concerned in the *Protestant* Rebellion, and now in the Spanish Service.

*Kelly*, in his (a) Examination before the Committee, owned his having intimately acquainted with this *Tuck*, and his having seen him the Morning he left *England*; and a (4) Letter signed by *Tuck*, was seized among *Mrs. Baran's* Papers, in the same Hand with (4) Letter sent from *France* to *Kelly*, signed by *Tuck*, which is an Answer to (4) one sent by *Kelly* to *Crow*.

On the twenty-sixth of April (4) *Card* acknowledges the Receipt of a Packet (already proved to be the Bishop's), and says, he delivered it to the Clerkman as he was directed, who let out for *Paris* on the fourth of April. On the fifth of May, *Dillon's* Secretary (4) writes to *Kelly*, \* Your Friend *Crow* is arrived safe, and delivered the dear *Basil* you gave him, as directed.

On the second of May, *Dillon* himself (4) writes to *James Tuck* (which will be found to be another of *Kelly's* Names) and says, \* I law your Account of *Crow* two Days ago, who delivered me a Packet from my Cousin *James*.

And on the same Day *James Tuck* (4) writes to *Kelly*, That *Mrs. Greville* gave him the Packet at *Boulogne*, which he delivered safe on Monday last, as directed. He adds, the Packet received me very obligingly, and was much more open to me than I expected. There, and hence, he is not known in any of the Papers of *Alber* or *Hayfield*.

On the twelfth of May, *Kelly* (4) writes to *Dillon*, \* That *Nogues* was glad to hear he had received his Letters by *Crow*, and wished his next might be more to *Dillon's* Satisfaction.

From these Passages it appears in one View, that the Bishop's Letters were sent by *Kelly* to *Hayfield*, by the P. O.; and thence conveyed to *Dillon* at *Paris*, by *Tuck*, *Kelly's* intimate Friend.

On the twenty-fourth of April, *Dillon's* Secretary (4) writes to *Kelly* a long Account of one *Alber* (*Nicholas Wagon* who was to command one of the Ships that was to be hired of *Lord St. John* Merchants at *Calcut*.

(a) D. 41. (b) D. 10. (c) D. 1. (d) E. 2. 8. p. (e) E. 31. (f) E. 1. 12. (g) E. 1. 12. (h) E. 1. 12. (i) E. 1. 12. (j) E. 1. 12. (k) E. 1. 12. (l) E. 1. 12. (m) E. 1. 12. (n) E. 1. 12. (o) E. 1. 12. (p) E. 1. 12. (q) E. 1. 12. (r) E. 1. 12. (s) E. 1. 12. (t) E. 1. 12. (u) E. 1. 12. (v) E. 1. 12. (w) E. 1. 12. (x) E. 1. 12. (y) E. 1. 12. (z) E. 1. 12.











Glasgow then adds, "Mrs. Melville (the Trembler's Spouse) in her short way of Expression says, 'I am truly glad that honest Humanity is rewarded, for I take him to be a very valuable Man.'"

"Then he says, 'I know these Compliments will be comfortable to a sick Person from his Friends, for which reason I trouble you with them, as a Proof of my Attention towards one I wish to well.'"

"These last words shew, that this Complaint was intended for Kelly, to support him under his Trouble, which is difficult and the Nation of Strangers, and your Committee think it unnecessary for them to make any Observation on a Passage, which these few plain words clearly set out as intended for him to have brought this Trouble on himself."

"Glasgow next tells him, 'That as he is upon regulating his new Book of Accounts, he should be glad to know whether Kelly and James had those by them they and Glasgow had together.'"

"This shews that Kelly's Journeys into France were not wholly on private Affairs, and confirms (a) *Nugent's* Account of his having seen Cyprius in Kelly's Hand, and is again confirmed by the (k) Cyprius found among Domini Kelly's Papers, which is a *George Kelly's* Hand-writing."

"It just then sends him the French Direction he had desired. On the 17th of July, Glasgow (c) writes again to Kelly, to let him know why the Bill was not sent, and to desire a false Address. He likewise excuses Kelly not to draw any more on Digby, but on Medhurst, Ghisland and Dagobert, at Mr. Hunt, Banker, Rue de la Monnaie. Your Committee observe, that this was about the time that Mr. Grayford (d) made the Discovery above related about the Name of Digby, and that for some time after, Kelly directs his Letters for Digby to Dagobert, till a new Cyprius, which he, Kelly, sent over afterwards came to be made use of."

"On the 28th of July, Kelly (e) writes to Glasgow, that Mr. Andrew received the several Letters from Glasgow all together, which was occasioned by a Mistake in directing them to King Street, instead of St. James's, which agrees with (f) *Dagobert's* above-mentioned."

"He then returns Thanks for the Letter of Credit intended him, and says he will come (frequently) to Mr. Williams at Mr. Collet's house, or to Mr. Andrew at the Dog and Duck. This, compared with Andrew's Delusions, shews that the Bill was for Kelly himself; which Observation the Committee think it proper to make, because, when he was excused before them in relation to the Letters directed to Andrew, that nothing was said to him about the said Bill, he immediately endeavoured to explain away that Matter by the following (g) Preparation."

"He said, 'He had been desired by one Mrs. Oubert in the City, Daughters to him who was married, to receive some Letters for her father abroad, and that he did not know but he might employ one Andrew, or some other Person to take up such Letters. That he had likewise received some Money on a Bill for the said Mrs. Oubert, of a little Man, a Banker in Ludbury, or somewhere behind the Exchange, and that he had cashed the Bill with his own Hand.'"

"Your Committee observe, that this last Circumstance makes it probable the Bill was for himself, since his Endeavours on a Foreign Bill (which is not usually made payable to the Bearer) would not have satisfied him to have received the Money, nor has been a sufficient Discharge, except the Bill had been made payable to him."

"They likewise observe, that Mr. Morris Harrell, on whom the Bill was drawn, where Kelly needed so true, does live behind the Exchange, tho' not in Antiquary; and in Glasgow's (h) Letter of the Twenty-fourth of July, Kelly is particularly desirous to shew the Bill on Harrell with his own Name. Your Committee submit it to the Consideration of the House, whether it is not evident from these Circumstances, that Kelly received the said Money for his own use as a Reward for his Sufferings, and an Encouragement to persevere in his Obstinacy."

"On the 23d of July, Kelly (i) writes to Taffet, 'That this Bill and the hopes of success in another Particular, when the Term is over, makes him a little easy.'"

"That as to what they had before talk'd about, he did not know what to say to it, and that *Noble Lord's* Return gave him the less hopes of it; but that he held the *Beneficial Spire* was certainly determined on something; but when, and in what manner, in what he knows nothing of. Who is meant by the *Beneficial Spire*, the Committee cannot take upon themselves to determine, but they observe, the Letter was writ the Day after *Ligon's* Return by *Wyndham* from *St. James*, at which time he told (k) *Flonkist*, 'That the *Beneficial's* Friends would run down the Ministry and King George in a little time, and bring the Law-Suit to bear on one Bottom, independent of the Regent, or any body else,' as is related in *Plunkett's* Letter of the same Date which was of Kelly's."

"On the 26th of August, Kelly (l) writes to Glasgow, 'That he had received the Bill. That his Letter of License is not out till the End of October, and that his Creditors threaten to draw him no Mercy: In the mean time he must hope the bill, and with that good fortune of Fortune may enable him to do them justice.'"

"He adds, 'but he thought he was to carry them, not with an Accident at the other Night, which prevented him; therefore he cannot do it till he recovers, or some other Opportunity offers.' Then sends a large Account of *Domini Kelly's* being taken up."

"On the 6th of August (m) he sends the same Account to Döllin, and mentions the great Terror the Quakers are under from Informers; which Intelligence your Committee observe, was thought considerable enough to make an Article in the *Forerunner's* last Declaration."

"On the 11th day he sends (n) Glasgow an account of *Sampson's* Grievance, and one *Cyprius* being taken up. That there were Reports of one Sir Henry George's being taken, and of Forces being sent for the Lord North and Grey, Lord Strafford, and other Persons of Quality, but that he

finds there is no Truth in them, and is told that the two last are common Town. He then desires to know Döllin's private Thoughts from what the said Report of his Cousin's Circumstances comes, which has been feared this Severity from his Creditors, and says, he hopes soon to see the State of their Accounts, which has hitherto been delayed for some proper Hand."

"On the 9th of August, Kelly (o) writes to Glasgow, 'That Döllin comes to town, and behaves like a Friend, but that Kelly is still in the Country, and is in the City, and that the latter had earnestly desired Kelly to go to him for a few Days, which he had hopes of doing; but instead of ed to make but a short Stay.'"

"Your Committee for reason to believe, that by this he meant Henry, who they find an Entry in Kelly's Pocket-Book of his having been at Mrs. Harrell's and another Entry in their Ward; To expose for 26<sup>th</sup> at Mr. William Bayling's at Horse-Dean, which is a House much frequented by Henry George, as appears by a (p) Disposition annexed to this Report. Who is meant by *Don* and *Henry* your Committee will not take upon them to determine, that they think this Letter, compared with that three Days before, may lead on a Discovery of the Person meant."

"On the 12th of August, Kelly (q) writes again to Glasgow, 'That he cannot return until five or six Days. Which agrees with the circumstance of his going down as far as Horse-Dean previously.'"

"He afterwards adds a very remarkable Paragraph in these Words: 'What would you advise poor Tenter to do, he is ready to take a V. any where, and if you know, an honest and fit Person for that Business, he has wrote very earnestly to me for my Advice, which I told him, could not tell I heard from you.'"

"Your Committee think it very Duty to observe to the House, that the (r) Cyprius found among Domini Kelly's Papers, in *George Kelly's* Hand-writing, Tenter is one of the Editious Names for over against Name of *Cover*, and that on the Day this Letter was writ, his Majesty signed his Royal Proclamation for apprehending the said *Cover*, in whom it is there set forth a Warrant had been issued by one of the Judges at St. for Treasonable Practices, and that he had absconded, and fled from Justice."

"Yet a justice from this Letter, that *George Kelly*, far from discomfiting where the said *Cover* was concealed, was desirous to promote his Escape by getting him invited to undertake a Voyage into foreign Parts, and notwithstanding the treacherous Practices alleged against him, he gave him the Testimonial of an honest Man, owns his having had Communication with him by Letter after the Time of his Escape, follows Glasgow in his Favour, and undertakes to aid and assist the said *Cover* in his Advice, as soon as he should have an Answer from Glasgow."

"On the 13th of August, (s) Glasgow writes again to Kelly, in relation to the Bill on Harrell, and mentions his expelling the Gentleman from the was to clear Accounts."

"He afterwards tells Kelly, 'That Mr. Melville had received Advice from her Father, that he is not to expect a Parting of the Allowance due to her for the Time paid, or to come, which Mrs. had procured.'"

"Seizure of, on account of her Husband's Debts and Mismanagement." Your Committee, from comparing this Letter with others, where *Melville* is mentioned, and from observing the Date, for reason to believe that this Passage relates to the Ropping a Pension, which the Commons are informed, by his Majesty's singular Bounty and Indulgence, and upon Application from the late Lord Mordaunt, and Promise of Services, was allowed to him, and they cannot rebel, without indignation and Abhorrence, on the black Ingratitude of Politics, who, while they were a great measure subsided by his Majesty's unexampled Liberty, now is bearing by the most wicked and ungrateful Practices, to displease him his Crown, and to destroy his Good Life."

"On the 17th of August, Glasgow (t) writes again to Kelly, and among other things says, 'He is continuing to go at *Barber* for a Relief in favour of *Former's* (the Pretender's) Children, in order their Step-Father should pretend to deprive them of their Dues.' It appears by another (u) Letter *Barber* means some considerable Person in France; but what this Passage particularly relates to, your Committee cannot with certainty determine. However they have thought it their Duty to lay this and other oblique Passages before the House, that they may be seen how much it is in the Power of Persons now in custody to discover, and of what Importance it is in the Safety of his Majesty's Government, that such Discovery should be acquired at their Hands."

"On the 20th of August, three Days before the Bishop of Rochester was taken into custody, Kelly (v) writes to Glasgow (the Original of whose Letter is deposited, and sworn to be his Hand-writing,) and says, 'You Cousins *James* and *William* are both gone into the Country, and cannot give the Favour of you not to write to them any more, for which you say, I am very sorry.'"

"On the 23rd of August, Kelly (w) writes to Döllin; and after giving a very long and particular Account of all the Circumstances of the Bishop's being taken up, examined, and committed to the Tower, he says, 'You say by this Sunday's of the Bishop of my late Silence.' Your Committee observe, That these Passages show the Connection which Kelly thought there was between the Bishop and himself."

"In the same Letter of the 20th of August your Committee observe another very remarkable Circumstance; Kelly says, that he is going to the Country this Day, and he had said (x) before, that he was going to Mr. Harrell in his (y) Pocket-Bookcase is taken, that Sir H. G. writes to Mr. on the 14th of September, Glasgow (z) writes him word, 'That Mr. Harrell was under a Fit of an old Scurvy at Dover, but that it was a life, for many good Reasons, to have been transported to Paris, there to see Abundance of Quacks going about, which cause much Mischief.'"

(m) E. 10. (n) E. 11. a. (o) E. 12. (p) E. 13. (q) E. 14. (r) E. 15. (s) E. 16. (t) E. 17. (u) E. 18. (v) E. 19. (w) E. 20. (x) E. 21. (y) E. 22. (z) E. 23.











represented the Disaffection chear'd in their Parts. Thus at present  
I do not feel at liberty to repeat my usual Solicitations in favour of your Brother  
and so to what is to follow I thought you merited: This I did  
not the first Occasion, after my coming over; to which, from the  
first, I have this Answer:

June the 15th.  
No body has a better Opinion than I have of the great Person you  
mention, nor does his Character merit Justice; I shall be always de-  
termin'd to do what is in my Power to converse him of any Regard for his  
Brethren, who now are in the Country with me; but I fear it will not  
be time to move in the Particular you mention of some Years yet, which  
will be the Case of all others who pretend to the same Right at I do.  
I fear he was too. There is a Pleasure to be with what generous  
Men he enjoys all who consider his Misfortunes.

I presume to mention one Thing more, being moved to it out of a  
well consider'd reason to the Credit it will give to your Name. Dr. Wishes  
himself under the Necessity of building the old House, being ready  
to go, and near Spring they begin, but upon so small a Fund as will  
scarcely half the Work, as it is cap'd to be; the Consequence of which  
will necessarily oblige them to beg the assistance of their Friends. I  
should be very upon this Occasion, that any other Person should dissem-  
inate this, by a Donation, as to merit his Name to be placed in  
the Front, where I could wish to be for your own. I have not (I take one  
word of this to any Person in the House, thinking it would look more  
gracious in you, if dispell'd to take the Credit of laying the first Stone,  
to move and order it yourself. As to other Matters, if I can be service-  
able in their Part, either in your Particular, or to the Interest of the  
Party, you know me faithfully devoted to both. I have obtain'd leave  
to return by the end of the Summer, finding it inconsistent to my private  
Situations to remain longer Abroad: I hope then to prelate you with  
such Poems with what Zeal and Respect For the Honour to be,

Yr. most Obedient and  
most humble Servant

I do please to address to me,  
Monsieur Hénin, under Cover of Monsieur Pignat, Banquier à Colini.

Your Committee observe from this Letter, that *Jenings* supposes the  
Duke of York already acquainted with a Design, on which Applications  
had been made to the Regent, and with the Causes of its Mistrust;  
and, however, in order to show his Zeal and Attention in any Things  
that are thought at the Duke's Sollicitude concern'd, he sends him an Ac-  
count of what had happen'd to these common Friends at Paris, and of the  
least being communicated to King George by the Regent's Order; and  
then intreats the Impossibility of arming themselves with sufficient Prudence  
against such a Conduict, which, supposing it to have been such as  
they mention, yet could not possibly have appeared Harmless to any but  
the Enemies of our present happy Establishment.

He then draws from the Situation of Affairs in Europe, there is but little  
hopeful of any Success, which may be favourable or advantageous to  
the Design.

He afterwards acquaints the Duke, that he had repeated his Sollicitations  
to the Pretender in favour of his Grace's Brethren, and had also added  
that in *Taylor* he thought *His Grace* himself would, to which he re-  
ceived an Answer from the Pretender (whom he styles the King), acknow-  
ledging his great esteem of the Duke, and the *Taylor* he does his Character,  
and his Resolutions to convince his Grace of his Regard, by any Kindness he  
can show his Brother.

And for Intention, which *Jenings* makes from the Regard express'd  
towards the Duke in this Letter at the Pretender's, is, That there is a  
Pleasure to be with what generous Virtue he (the Pretender) enjoys all  
that will consider his Misfortunes.

He concludes with telling the Duke, that if he can be serviceable in  
their Part, either in his Grace's own Particular, or to the Interest of the  
Party, his Grace knows him faithfully devoted to both.

On the 5<sup>th</sup> of August, *Jenings* writes a second Letter to the Duke, as  
before.

SIR,  
THE Pleasure in our Affairs being a perpetual ebbing and flowing,  
it is extremely difficult to assure any thing with Certainty: In my  
last of the 12th I mention'd how Things had happen'd; and altho' the  
last was true, yet the Consequence did not answer what we apprehend-  
ed. It was a pitiable Necessity which urg'd and demand'd that  
Conduict, and it appears now to have succeed'd in well, that every  
Body is at work, as before, to draw Things to a right Conclusion;  
and, we see later'd that the Regent is cordially in our Interest, and  
desires every thing to undertake the Work, which, according to former  
treaties, will be in execution within two Months; those who  
deserve and make due Reflection on their Manners, know how far  
they may be useful to the Cause, and with timely and prudent Precau-  
tions may dispulse their Friends to add a lovely Part, whilst they them-  
selves keep retired, all the Success one way or the other determines  
itself: It is necessary to be done.

I have Opportunities, by being in their Parts, of picking up several  
Officers, and with a little Trouble as many as would compose an  
entire Regiment, into which any Gentleman might come himself, and  
do his Duty with Honour. This is what I thought fit to propose on this  
Occasion, and should be glad to know, if solely upon your own Bottoms  
it may be thought on. I shall take all necessary Precaution, and shall  
know certainly what there is to depend upon. Your Opinion on  
these Matters, with the Assistance of your Advice, will lay a most  
valuable Obligation on him, who entirely deserves himself,

Sir, your most Obedient and  
most humble Servant.

I let the Conveyer of these furnish you with my immediate Address.

Your Committee observe, that in this letter, *Jenings* does, with an Air  
of great Satisfaction, say to his former Applications and Disappoint-  
ments, which he says of his former Accusations of the Regent's being  
betray'd the Secret might have, which is his Grace, and says it is at  
Hand is now at work, as before, to draw Things to a right Conclusion;  
and explaining what that former D<sup>ty</sup> is, or the D<sup>ty</sup> in Conduict him, for as  
which Particular, it appears, he thought to well known to the Duke as  
to not need the least Explanation.

Then after telling his Grace, that he is sure'd the Regent is cordially  
in our Interest, and is desiring every Thing to undertake the Work concern-  
ing two Months Time, he intimates, that from this Hint, one of his Grace's  
Secretaries and Relations might be useful to the Cause, by disposing  
of Friends (who may justly be understood to be the Roman Catholics) to  
add a lovely Part, while he himself has acted, waiting till we have  
should determine what Part it was proper for him to take.

He then makes the Offer to his Grace of raising in another Regiment of  
Officers in Flanders, into which any Gentleman might come himself, and  
do his Duty with Honour: I desires to know, whether on his Grace's  
own Bottoms such a Thing might be thought of.

This intenable Offer, from an honest servant of his Grace's, shows  
that *Jenings* was at least persuaded it would not be thought of, which  
could only proceed from a sincere Assurance of the Duke's Inclinations  
to the Pretender's Cause, and of his Intention to support it with Men  
and Money, whence a Probability of Success should make it safe and  
proper for him to have it propos'd.

Your Committee is this observe, that this letter does with a great  
freedom Time that *Blair* was to be putting *India* to follow in the Re-  
gent's Assistance, and that the Terms for putting it, before us, as above,  
which is mention'd in *Jenings*'s Letter to be within two Months from the  
Beginning of August, has an evident relation to the third Period pitch'd  
upon by the Conspirators, which, as has been observed before, will be  
the breaking up of the Camp. And it appears to your Committee, by a  
concurrent (a) Advice from France, Spain, and Italy, in the Month  
of July and August, that the Design, which had been laid upon upon  
the last Discovery of the Plot, was again returned, and it was perma-  
nently made for the Pretender's leaving Italy about the Beginning of August, to  
which Purpose the Ship *Reine*, as it is called, set sail for Italy the 10<sup>th</sup> of  
August, having on board near two hundred Men and a great Num-  
ber of Officers.

Mention is made, in *Jenings*'s Letter to Mrs. Spelman, of a great  
Number of Letters written to, and received from Mr. Marjory of Cambray,  
by the Name of Mr. Wilson; and in (b) one of his Letters to Mr. Marjory  
he says, "The Regent plays a Game upon, and considers in some his  
Brethren, and has Granted them to make a firm Friend of King George."  
The last Indiscreetness in so many has given a surprising Power  
to the Court of France. He had used all other Princes in regard to this;  
"more now they look that way, or mistake the least trifling Success in  
our favour."

On the 20<sup>th</sup> of July, Mr. Harvey gave an Answer to this Letter, the  
Original of which is before, and (c) seven by Miss Harvey to be  
his Hand-writing; but it contains nothing of the Nature of the above and violent  
Sensations, that the Committee is surpris'd to find in the above  
with any Extract of its contents, (d) answered it either to their Re-  
port.

Your Committee has already observ'd, however, that the plausible Cor-  
respondence above has been continued, to the Duke's, but was  
carried on in England, under the Name of an Expedition of *John*, *Tracy*,  
Gandy, &c. And it appears that the Pretender's Agents were equally  
busy in disposing Matters for an Intimation in this Part of the Kingdom,  
at the same Periods of Time as were held on in *Italy*.

They find that the Government has receiv'd (e) Information upon  
Oath from one *Lieutenant*, that on the 18<sup>th</sup> of January 1721,  
Brigadier *Macdonald* was seen by him (f) *Admiral* at the House of Sir  
John Macdonald of Cambray, and told *Admiral* of the Plot, and design'd to  
have on the Crown of Scotland his Majesty, and that he was to  
be assisted from France, Spain, and Italy, that General *Gordon* and  
Captain *Telford* were to land at the Coast with Arms for this Pur-  
pose.

That *Macdonald* was then in Britain, agrees with f. Part of the De-  
position.

*Admiral* further deposes, "That on the 15<sup>th</sup> of February he sent the Lord  
George Marjory at a Place not far from the La in Scotland, who came  
and said to him what *Macdonald* said, with several other Particulars;  
That two Days after, he sent Mr. John Keith, Brother to the Lord  
Marjory, who after having told him that there would be a Design on  
in favour of the Pretender, desired him to send several Friends (g) who  
Deposition that were come over to get Matters in a readiness."

This, your Committee observes, answers to the last Period of Time  
for beginning an Intimation, with the help of foreign Forces, during the  
Time of the Election.

About the Beginning of May a (g) Letter was intercepted, directed to  
Mr. Peter Smith at *Brussels*, and including another to Dr. Morris. Which  
Letters, as your Committee are inform'd, are in the Hand-writing of Sir  
Gordon. Who is meant by Dr. Morris, does not appear in the Duke's Water,  
in this letter, or elsewhere. "Our Cashiers, on you see, are sending the money, but I am  
afraid if they are not sent from the Market will be furnish'd, for our  
Exchanges begin to be upon their Guard. He adds, that their Friends in  
England are willing to send Money to pay for them per Advance, and  
that they are sented are not backward, but hope, in a few Days to  
have as much Money as will be sufficient for their Country. He then  
desires to know how soon they may expect their Wines on this Side the  
Water, that they may put themselves in a justness of Place for receiving  
them."

Your Committee likewise find that *Christopher* Glendon, Duke's Agent,  
carried on (h) Correspondence to the same Effect, with one who was: as



the Name of *James Telford*, at *Edinburgh*; and that (c) *George Kelly* corresponded with the *late James Telford*, and moved in the Lords at his (d) Examination, by having him the said *Testimony* Paper from *Gloucester*, which he presented signed only to the *Magistrate*.

Letters were likewise intercepted going from *Edinburgh*, directed to *Walker* at *Mr. Brown's*, Banker at *Paris*; which *Gilpin* appears, by *Nelson's* (e) Cypres, to be *John Campbell of Glendowrie*.

In (d) one of these Letters to *Gilpin*, Mention is made of a Person of great Consequence and Distinction, lately resigned to the President's Papers, who infested on a Sight of the *Constitution of Liberty*, which *Gilpin* is desired to send over by the first safe Hand; and *Gilpin*, in his (f) Answer signed *R. Rogers*, promises it shall be sent over.

Your Committee observe, that this Particular agrees with (f) *Folger's* Deposition upon Oaths, that *Lager* told him the People of England were backward, but that those of *Scotland* had already entered into an Association.

In the first (g) Letter to *Gilpin* in this, That the Person of Consequence who had infested on a Sight of the *Constitution of Liberty*, desired an Order from *Mr. Atterbury* for raising one or two Battalions, but was told these Orders might come time enough by the Hands of those who happened to come first to open the *Conspiracy*, which flows of what nature that *Conspiracy* was.

In the first Letter Application is made to *Mr. Atterbury* for a Patent for Knight Banner; both which Circumstances confirm *Atterbury* to be the President.

Your Committee observe, that these Letters, and (h) some others, which appear to have been intercepted about the Month of *May*, and are annexed to this Report, tell in with the second Period of Time fixed by the *Conspirators* in England.

And on the 18th of *August*, O. S. *Mr. Stenley* (i), writes word from *Atterbury*, that he had received Intelligence, that the Duke had engaged to bring 20000 Men into the Field in ten Days time, to fight the late Duke of *Gloucester's* old army with Arms to head them, and that they daily sent great packing Messages to *Atterbury* on that Subject, which shews that the Duke was reassured a third time in *Scotland*, as it was in England.

Your Committee further observe, that agreeably to what was promised in *Mr. Atterbury's* Letter of the 28th of *April*, (k) *Mr. William Eyles* did on the 21st of *May*, receive Two Thousand Pounds Sterling to *Mr. General D'Arcy's* Secretary at *Paris*, and owned his doing so on his (l) Examination before the Lord Justice Clerk. Uf the said Sum was remitted to *General D'Arcy*, or from whom and for whose Use the said Sum was remitted.

What he was taken into Custody, a Letter was seized in his Pocket, which, as your Committee is (m) informed, is still in the late Lord *Atterbury's* own Hand-Writing, dated *Paris*, February the 27th, 1723, in the following Words:

*Paris*, February 9, 1723.

I Have, *William*, yours of the 7th, for which I am obliged to you, and take all you say, as I ought, from the good Heart from whence I know it comes, tho' at the same time you put a greater Value on your Friend than he deserves. But be that as it will, I am fully persuaded, as you may be, that he will never fail an Obedience to what you may be pleased to command him, which, as you may be, will be to his Country, and his Friends and Countrymen may depend on it, when they see him engaged again, that the retrieving of it from the low Condition it is now in, and otherwise ever like to be, is the chief Motive that induces him and he hopes, in that way it will not be without the Assistance of all who wish the same thing; and the more, that he will take all the care he can to execute them for doing that, or of others at the same time he is not pious full of his doing effectual Success to that end, and putting it off till then full has been close Success to you. If he is to be to his own private Interest, he could perhaps find a way, which could conduce more so; but he hopes by his former Action, it appears that he is never put that in consideration, with what he thought was the Interest of his Country, tho' he is now he was once mistaken, as many others may have been, but as he now is fringed with his Fault, since he found it by Experience, he is now to be his own since endeavored to make amends, and will as long as he lives.

Though I am in such a Situation at present over all Europe, that there is no one, who is in any Opposition, of doing what it is to be with open that Account, but things of this Kind are very uncertain, and as Opportunity may come, or be brought about, when least expected, and you may believe it will not be neglected when it does, as well as my Reasoning be thought to hang on that Part. Hadst thou, methinks, the word, and *Atterbury* could not take and then not being acquainted previously to the Execution, as which it was he hoped they will not fail.

You see I make no Scruple in writing freely to you, but you know the Consequence of this coming into wrong Hands, and that it is fit and of use to be told to you, you know too. So I am, it is to your own Discretion, of which you have given me many Proofs. I have been much out of use of writing to *Mr. S.* for some Years past, and I have not yet got a return of some I wrote him last Summer; but I shall write to him of what you mention in your.

As to *Atterbury*, I can not to say more about him; and were it not that I think it for the good of a certain Person and Cause, I should not even wish to say. All the Truth told of him far is being abroad. I cannot answer for what hands may be given for his justification; but let honest Men, with right, tell the Truth, where they know it, and that it is necessary, and leave the Devil.

I wish you a good Journey and good Luck with all my heart, and that we may soon have an Opportunity to meet presently, and be of use to our Country. My Compliments to my Friends, and I hope we shall here have cause to be ashamed of other.

I shall long impatiently to hear from you when your journey to *London* and *Edinburgh*, and pray do not fail writing after your coming to *London*.

Places, and have them People.

Send me your Address, and you may be sure of hearing from me when it can be of any use. Pardon it would be always to me, but I must yield sometimes to Circumstances.

My Family salute you, and with you all Happenings; as I do, who sincerely and affectionately yours, *Sto*.

I wish you may have something agreeable to tell me of your Journey.

And Uncle, when you have seen them, and remember me kindly to them.

Farther-in-law. Sure we shall all with the least way to our Country.

What is become of our Cousin *Widd*, who I hear is still where he has been for some time?

Your Committee likewise find evident Footsteps of this Testimony Correspondence (k) from *Edinburgh*, but having already shewn shews the Extent of the *Conspiracy*, they forbear to tire the House with any further Particulars.

Your Committee have now gone thro' the several Matters, that appear to them from the Examination of the Papers of *Atterbury*, relating to them, and they are in hopes, that in repeating every Circumstance that seems material, they have briefly comply'd with the Intention of the House as appointing them.

If the frequent Repetitions of the same Matter have forc'd the Report too long a Length, they are persuaded the House will excuse it, as it was in all the Places where they have done it, necessary to explain Particulars related, or else to show the Connection of the Particulars, as well as the Co-operation of the Conspirators, in their wicked Deceit of cheating his most sacred Majesty, and overturning our precious Establishment in Church and State.

On March 5. The House proceeded to take the said Report into Consideration. Whereupon the House came to the following Resolutions.

That upon Consideration of the Report, and the several Papers annexed thereto.

Examinations relating to the Conspiracy, it appears to the House, That

a detestable and horrid Conspiracy has been formed and carried on by

some of the most distinguished Persons, and their Agents and Influences, in

conjunction with Treasonable and for invading their Kingdoms of

Foreign Forces, for raising Insurrections and a Rebellion at Home, and

slaying the King and City of *London*, for laying violent Hands upon

the Person of his most sacred Majesty and the Prince of Wales, in order

to subvert our present happy Establishment in Church and State, and

placing a Popish Pretender upon the Throne.

That it appears in this House, that *John Pemberton* has been a principal

Agent and Instrument in the said horrid and detestable Conspiracy, and

has carried on several treasonable Correspondences, to procure a foreign

Force to invade their Kingdoms, and to raise Insurrections and a Rebellion

at Home, and was engaged with others in the villainous and execrable

Design of laying violent Hands upon his Majesty's most sacred Person.

That upon this House, that *George Kelly* alias *Telford*, has been a

principal Agent and Instrument in the said horrid and detestable Conspiracy,

and has carried on several treasonable Correspondences, to procure a foreign

Force to invade their Kingdoms, and to raise Insurrections and a Rebellion at Home,

and was engaged with others in the villainous and execrable Design of laying violent Hands upon his Majesty's most sacred Person.

That it appears in this House that *Francis Lord Bishop of Rochester*

was principally concerned in forming, directing and carrying on the said

treasonable and detestable Conspiracy, for invading their Kingdoms with

Foreign Force, and for raising Insurrections and a Rebellion at Home,

in order to subvert our present happy Establishment in Church and State,

by placing a Popish Pretender upon the Throne.

In pursuance of said Resolutions, it was order'd by the House, that

the Bills of Pains and Penalties should be, severally sent to the said *John Pemberton*, *George Kelly*, and *Francis Lord Bishop of Rochester*.

March 14. The House came to a Resolution to consider their Report to the Lords at a Conference, and also (having obtained the King's

leave) the Letters and Papers relating to the Conspiracy.

March 16. The House of Lords chose the following Peers to be a Committee to enquire into the said Conspiracy.

His Grace the Duke of Devon. The Lord Lisle.

His Grace the Duke of Norfolk. The Lord Torrington.

The Earl of Sandwich. The Bishop of Exeter.

The Earl of Lincoln. The Bishop of Salisbury.

The Earl of Bly.

This Committee made their Report on April 23d, which was as follows.

THE Committee to whom the Report and Original Papers relating to the Conspiracy, delivered by the House of Commons at several Conferences were referred, and who were empowered by your Lordships (namely *Christopher Layer*, and each other Person as they from time to time should think proper, having carefully compared the said Report with the Original Papers refers it to them, and his long examined them in relation to the detestable Practices and Correspondences therein set forth, are fully persuaded and convinced, that a detestable and horrid Conspiracy, has been formed and carried on by *John Pemberton* a Foreign Force to invade their Kingdoms, for raising a Rebellion, and raising Insurrections in *London*, and divers other Parts of *Great-Britain*, and even by laying violent Hands on the sacred Person of his Majesty, and on the Royal Highness Prince of Wales, in order to subvert our Religion and Constitution, by placing a Popish Pretender on the Throne.

And the Lords Committee, think themselves oblig'd in Justice to observe, that the extraordinary Vigilance and Application which has been shewn by the House of Commons in this long and difficult Inquiry, and laying its most hidden Springs in so full and clear a Light, as it has greatly contributed to the Publick Service, in opening the Eyes, and awakening the just Reasonings of an











Lepre owns, that *How* told him *Bolton* was the Pretender's Banker; and desires his finding any such Packet by *Hoy*: And in several other Particulars of these Examinations they contradicted each other.

A Scheme of the Lottery above-mentioned (for raising 225,000 Pounds Sterling) having been found among the Papers of *Robert Topham*, now in Custody, the Lords Commissioners thought proper to examine him in the cause by *it*. He owned his being acquainted with *Lepre* and *Phlox*; that he gave *Lepre* about the Time of his going abroad, and he had sent him a Bill on a Banker at *Amsterd*: But he denied his knowledge when he received the said Scheme, or his having had any Conference with any one about it; and said it might be put into his Hands by *Phlox*, for might be knew, but that he was not sure he had ever sent it; and it he had known that a Paper had been in his Custody, he would have destroyed it.

The Lords Commissioners being informed that *Lepre*, between the Time of his delivering the largest and lesser Bundle of Papers to *Mrs. Mayne*, and delivering to her a large Parcel covered with blue paper and sealed in several Places, and that he did within a few Days after take it back from her, telling her he wanted to carry it to Lord North and *Geyd*'s. They then examined *Lepre* particularly on this head; but he denied that he ever delivered her any such Bundle.

The Lords Commissioners next proceeded to the Examination of *John Phlox*, who began with large Protestations of his Innocence, and offered of himself to account for those Facts charged upon him in the Report, and in those there were great Mistakes. The first was, his receiving a Letter from *George Kelly*; the second, his receiving the Letter at *Amsterd*, signed *Daniel*; and the third, his receiving the Letter from the Pretender, taken at *Mrs. Grey's*. And so in his Examination before the Committee of the House of Commons he had fallen on the Expedient of telling along *How* Thence to perjure himself, so now they found he had contradicted himself with three different Persons, at different Places, and the Name of *Phlox*, so whom he would have it believed these Letters were written, without offering any kind Proof or Circumstance of Probability to show that such Persons were at all concerned in these Letters, or that there ever were any such Persons as being.

The Letter from *George Kelly*, he said, was not sent to him, but to one *Harry Goring*, who delivered it to him at *Mr. Kelly's* Coffee-House, *Greenwich*, and that it related to some Money that was to be raised on a Security of *Mrs. Borell's*.

As to the Letter signed *Daniel*, he said, there were two Clergymen of the Church of *Rome*, one or both of which travelled with *Mrs. and Lord Byron* from *Amsterd*; that one of them went by the Name of *Lepre*, but his real Name was *Phlox*. That this Man dropped the letter signed *Daniel* at a Coffee-House; and he, *John Phlox*, taking it up, was a Design of restoring it to him in *Leicester*, (so which place foretold him, and foretold both of these Clergymen were gone) showed it to *Lepre*, who took it into his Head that this Letter had been sent to him, *John Phlox*.

The Letter from the Pretender, he said, fell into his Hands much in the same manner: That there is one Father *Phlox* at *Rome*, to whom the Pretender always writes when any Body is to be introduced to him. Being asked whether *Father Phlox* travelled with *Lepre* to *Rome*, (because *Memoria* is made in the Pretender's Letter of a Companion of *Phlox*'s) he said the Pretender always called the Person that was to be introduced by *Father Phlox*, his Companion. That this *Father Phlox* happened to meet him this Letter, and commending the *Hand*, to *John Phlox*, told him a Friend at *Rome* that would be glad to see the Pretender, *Burdett*, and *Father Phlox* having accordingly left the Letter with him, he showed it to *Lepre*, and forgot to return it to *Father Phlox*, who never called on him, having fifty more Letters of the same kind in his Hand.

Upon the Lords Commissioners asking him, whether he went by the Name of *Reyer*? He said he went by several Names in his Travels, that he might not be imposed upon in his reckonings; as the *English* generally are, being abroad, whether he took the Name of *Reyer* to prevent his being thought as *English*. He said that in *Italy* he was called *Reyer*.

They further asked him, whether he had dictated any Billings to *Lepre*, or had mentioned any Thing to him of a Club? To which he answered, that he had given *Lepre* the fictitious Name of *John*, or *Barford*, for Lord *Ormsby*, whose Name he had from *Nysson* one Night before, in company with *Lepre*, and some Clergymen. His Name he has forgot, the Dictator turning on the Protocols of the Lords, and the Names that were introduced to them, one of the Company told, There are a *Loyal Club*; another Club, they are Jacobites; and that is, *Phlox*, said, There was a *Loyal Club* of eighty or ninety Lords who would have in Defence of their Country.

He further observed to the Committee, That in the Bill now depending in your Lordships, he is not mentioned by the Name by which he was mentioned and continued: He said, his Sur-name was *Phlox*, but his Christian Name he declined telling; and seemed to place some Hopes of Confidence in this Subterfuge.

The Committee finding him trifling with them in this egregious Manner, and him in general, whether he had ever been in Conference with the Pretender, or had corresponded with him, or any of his Agents? To which he answered in the Negative.

The Committee next sent for *George Kelly*, who told them that the Pretender being first to be known by your Lordships, he desired to be asked from answering any Questions, to that they had no Opportunity of examining him as in the new Manner alleged against him in the Depositions of *Mr. Philip Geyd* and others.

However, they thought it proper to send for the said *Mr. Kelly*, and to ask him whether he had any thing to add to, or to retract from his former Depositions? His Depositions being read over to him, he expiated himself as being not worthy at their being made Public; and told the Committee he was not disposed to answer any further Questions, being weary for what

he had said already; he likewise intimated, that what he had said had not been taken down exactly as he dictated it, and seemed apprehensive that he was called upon to accuse himself of Matters that might be prejudicial to him. But upon the Committee's telling him that the most efficacious Way he could take to do himself Service, was to make a candid and ingenuous Discovery of the whole Truth, he said he had already given a candid Account, and hoped he should not have been a Sufferer for his Candour. Being asked, whether his Deposition had not been read over to him before he signed them? He said they were not. But that he was a great Confidant at the Time they were taken. If they were read over by the Committee to read them over himself, and to draw what Part was in them very from his Sense and Meaning, he grew much composed; and having read over the first, dated the 29th of *March*, 1723, he heard it was right enough. In reading over the second, dated the 29th of *April*, he said it was a strictly true that *Sir Harry Goring* had told him what is there related concerning an Invasion, Commission, &c. but that it was true, he had heard *Sir Harry Goring* say so; that as to Lord *Landis*'s being to land in the *Way*, he could not be positive, but he thinks *Sir Harry Goring* said so. He said, it was but a Supposition of his own, that the Dictator which occasioned the Bishop of *Richmond*'s taking *Sir Harry Goring* by the Collar, related to the Pretender's Affairs. But that he remembers very well, *Sir Harry Goring* did affirm, that on his flying the Words there related, (this is *Richard the Great* read) the Bishop did take him by the Collar, and that he, *Geyd*, did apprehend the said Dictator to have Relation to the Pretender's Affairs. He said it was about two Years ago that being at *Sir Harry Goring*'s he saw a Letter he saw *Sir Harry Goring*, directed to him, *Harry*, and upon his seeing the Letter was for *Sir Harry* told it was sent to himself. He said that the Words in his Deposition which import, that he, *Geyd*, did receive in his *Kelly* and *Sir Harry Goring* were sitting together at a Key at his House at *North*, by which they might correspond, are very false; for that he, *Geyd*, did not see any such Key, only it was his Suspicion; and he thought at that Time that they were drawing such a Key.

He likewise said, that what relates to *Baylis* the said Deposition is rather stronger than he meant it; for that *Baylis* only told him he was afraid the Servant, he, *Geyd*, had sent to him to help off, was *Simple*; although he had observed to him he was *Simple*, and that he was afraid he was somewhat like the Description given of *Simple* in the Proclamation. All the other Particulars of his Deposition he asserted to be true, but said, he had nothing further to add, and that he would rather a thousand Times die in *Amsterd* than be an Evildoer.

*Baylis*, being examined by the Committee, owned that *Sir Harry Goring* went to France on his Yacht, and that a servant went over with him in a Black Wig, whom he had never seen with *Sir Harry Goring* before; but he utterly denied his having conversed over any Person sent to him by *Mr. Geyd*, or his having had any Discourse with *Geyd* about any Person's answering the Description of *Simple*.

The Committee having questioned before them *William Baylis* of *Herr Doss*, and having read to him his former Depositions, said that he contradicted what he had there deplored on Oath, of *Geyd* and *Sir Harry Goring*'s being in Company at his House with the Person who had but one Hand: He says, such a Person was at his House with two other Gentlemen, but that he now recollects *Geyd* and *Sir Harry Goring* were not there at that Time. Being asked whether he had received any Letter or Message, since his being in Custody, which had helped to set him right in this Particular? He answered in the Negative.

The Committee observed to the *Part* of *Mr. Geyd*'s Depositions in which he affirmed, that the Explication given to the Name of *Harry*, in the Report of the Committee of the House of Commons, as also the Deciphering of that Part of *Kelly*'s (8) Letter which mentions *Harry*'s Commission, and the Conjecture of *Geyd*'s having carried over a new Cypher from *Kelly* to France, are very much confirmed. They likewise observed, that what is said in *Geyd*'s (2) Letter to *Kelly* of the [2] of *October*, concerning the Arrival of the little French Merchant, mentioned by *Kelly*, and the Proposition they intend to use in relation to him till some other appears with whom they may talk of Business more to the Purpose, has probably relation to *Simple*'s being gone late to France. And the letters signed *Pro Phlox*, which *Geyd* has received from *Kelly*, not only confirm *Kelly*'s writing by fictitious Names, but is a strong Argument of his being the Person that wrote the (2) Letter to *Burdett* on the 29th of *September*, and consequently the other Letters charged upon him in the Report. But as in his Letter to *Geyd*, he says, 'I have a short board a Shipboard from your other Lawyer, [for *Sir Harry Goring*] since you and I were with him, which you'll give in your own name, and an alias very different'—he in that to *Burdett* (see what we have said of *Simple*) he says, 'I have not heard a Shipboard from *Dr. Geyd*, or *Dr. Kelly*, since his *G. Geyd* went, which has been a great Surprise, and I may say an small Disappointment to have of these Pranks.'

This Identity of Expression, in two Letters sent so near the same Time, appears to be a further Confirmation that the same Person wrote them both, and confirms *G. Geyd* to be the same with the other Lawyer, which *Geyd* has explained to mean *Sir Harry Goring*.

The Lords Commissioners also find on the Papers referred to them new Evidence of *Kelly*'s writing, writing to, and receiving Letters from the Bishop of *Richmond*, by (2) Affidavits from the Persons who carry'd *Kelly* to the Bishop's House, and who also delivered Letters from him to the Bishop, and brought back the Bishop's Answer, and *Mrs. Levis* (2) deposes on Oath, that *Mrs. Borell* has told her, *Kelly* received in one Day as many Letters from abroad as came to fourteen or fifteen Shillings, the Directions of which she, *Borell*, saw, but that they were in such odd intemperate Names, as no one could read out but *Kelly*, who had the Key; that among these Letters there was one for the Bishop of *Richmond*, (as *Kelly* told her) which he was at that Time gone to deliver to the Bishop. And *John Ashby* (2) deposes, That among the Letters which he carried from *Kelly* to the Post, there were some



directed to *Waters*, the *Banker at Paris*, under whose Cover it appears that most of the unreasonable Letters were sent; and the original (c) Letter in *Kelly's* own Hand, says at the Post-Office was enclosed in a Cover so directed. Mrs. Lovell further (d) deposes, That Mrs. Bowen told her, under Story, that the Dog, sent from *France* was a Pretence from the *late L. re. d'Amboise* to the Bishop of *Rochester*; which is in some measure confirmed by the Draught of the Affidavit prepared for *Birmingham at Paris*, in which he is desired to fear that *Lord Merv* knew nothing of any such Dog. And tho' this Affidavit does not appear to have been sent over by *Kelly* directly, yet express Mention is made in the Letter to *Gardine*, that the said Affidavit is the Copy of a Note from the Person concerned with the Subjunct of what he *deposits* upon. This Circumstance of the Dog's having been sent by the *late Lord Merv*, which is not expressly alleged in any Part of the Report of the Committee of the House of Commons, is a new Confirmation that the (c) Letter signed *gth*, which mentions the sending the Dog, is from *Merv*, and that *Atterbury*, to whom the Receipt of the Dog is acknowledged on (d) two several Letters, is likewise a Name denoting *Merv*, agreeably to what is affirmed in the said Report.

The Committee find by (e) two Affidavits referred to them, that *George Ross*, the last time he was taken into Custody, offered the Woman of the House a Gold Watch, forty Guineas in Money, and a Note for forty Pounds more, to keep him out.

The Committee have had the Subjunct of these several Examinations together, as having been *Reliance* to *George Kelly*.

They likewise examined Mr. *David Kelly*, who utterly denied his being advised with, or knowing any thing relating to any Conspiracy. Several Papers found in his Custody being shown to him, he denied his having ever seen them before, except when force of them were shown to him, at former Examinations.

They next sent for *Captain Pender*, and having ordered his (f) former Depositions to be read to him, ask'd him whether he had any thing to add or retract? He affirmed every Part thereof to be true, and said he said only this farther Particular to add, That having lately from *George Kelly*, as he was brought down to the House of Commons, he recollected that he has often been him at the Gaming-Table with *Stowe*, and that *Stowe* and the said *Kelly* were intimately acquainted, as he is able to prove by several Witnesses of Credit. *Stowe* being call'd in, and having heard *Pender's* Depositions read over to him, own'd that he was acquainted with *Pender*, and had been in Company with him at several of the Times and Places mention'd in the said Depositions; That he was taken Prisoner in the *Popish Rebellion*, has not been released by *Stowe*, nor has ever been *Atterbury's* since he parted from him at *St. James's*. He own'd he had general Disaffection with *Pender* relating to a Plot, and that *Pender* had ask'd him several Questions about it, in some of which he (*Stowe*) answered, and to others not; but he denied his having told *Pender* any further Particulars than were in the News-Papers, or in the current Report of the Town. As for Instance, when *Pender* asked him, where the late Duke of *Ormond* was? He told him the News-Papers said he was at *Genoa*; and he positively denied his having ever mentioned to *Pender* any Particular *Prerogative* as concern'd in the Conspiracy, or any of the *Particular Facts* specified in his Depositions.

He further said, He had reason to believe that *Pender* had sent to him, since his being in Custody, to advise him to make his Escape; for that one *Gervase Fitzgerald* having been walking with *Pender* in the Park, came directly from thence to him, *Stowe*, at the Messenger's House, and advised him to make his Escape; tho' he own'd that *Fitzgerald* made no Mention of *Pender's* having sent him any such Advice.

*Fitzgerald* being sent for by the Committee, own'd he had been to see *Stowe*, and finding no-body at that Time at the House but a Woman, told *Stowe*, it would be an easy Matter for him to escape. He further said, *Pender* from having sent any such Intimation of Advice. He further said, that *Stowe* told him he did not know but he might have risk'd foolishly to *Popery*, but that if he had, *Pender* was but a single Evidence, or to that Effect.

The Committee find, among the Papers referred to them, a (g) Copy of the Orders which should receive from the Owners of the Ship *Phoenix*, requiring him to follow the Directions of *Roger Nunn* (Hafstead) during the Voyage, as also an (h) Affidavit, by which it appears, that the said *Hafstead* was to visit the Bishop of *Rochester*, and find an Hour at his House, a few Days before his future departure from *London*.

They also find a very considerable (i) Letter sent to one of the Secretaries of State, by an unknown Hand, under the 22th of February, 1721-22, and inclosed in (k) one, dated the 23th of *March*; which first appears to be the Letter referred to in (j) one of *Norton's* Examinations, as drawn up by *Kelly* and himself, and brought back to him connected, as he believed, by the Bishop of *Rochester*.

They likewise find a (m) Paper taken in *Lord North* and *Grey's* Study at *Georgie*, which contains several very extraordinary Resolutions on the Nature of Oaths: tending to prove, That the Oath as to the present Government is not obligatory; and that tho' the taking such Oaths is in itself unlawful, and grievous Sin, as being inconsistent with prior Oaths or Obligations; yet neither the taking nor breaking them can in themselves fall under the Examination of Perjury.

This is the Subjunct of what the Committee have been able to collect from a careful Perusal of the Papers referred to them, and a long Examination of several of the Persons concerned; in some of whose Power they have Reason to believe it was to have made simple Discoveries, if they had been disposed to speak the Truth.

And tho' the Lords Commissioners cannot reflect, without Pity and Compassion, on the misguided *Zeal*, and wretched Infatuation of those Men, who rather chuse to expose themselves to the greatest Danger, than to discover the Authors or Accomplices of their Treasons, thereby declaring to the World, that the League and Confederacies of private Villany are dearer and more sacred to them than the strongest Ties and Obligations of Society; yet the Committee make no doubt but the Matters contained in the Report referred to them, and corroborated by the Result of their

present Enquiry, will appear to your Lordships to clearly make out, the Conspiracy, sooner or later, will have, in future to repent of, rather, than to God, their Conscience, and their Country.

On April 10, the House (according to Order) took into Consideration the Report from the Lords Commissioners, to whom the Report Original Papers delivered by the House of Commons at several Conferences were referred; and who were empowered by this House to examine *Christopher Layer*, and such other Persons as they from time to time should think proper. And the said Report being read, it is resolved by the Spiritual and Temporal in Parliament Assembled, That this House be informed and concerned, That a detestable and wicked Conspiracy has been formed and carried on, for inciting a Foreign Force to invade the Kingdoms, for raising a Rebellion, and exciting Insurrections in *London* and divers other Parts of Great-Britain, and even for laying violent Hands on the sacred Person of His Majesty, and on His Royal Highness the Prince of Wales, in order to subvert our Religion and happy Constitution, by placing a Popish Pretender on the Throne.

Resolved, By the Lords Spiritual and Temporal in Parliament Assembled, That the Thanks of this House be given, by the Lord Chamberlain to the said Lords Commissioners, for their having discharged the Trust reposed in them with great Exactness, Care, Fidelity, and Candour.

The Lord Chamberlain addressing himself to the Lords of the said Committee, (viz. Duke of *Arundel*, Duke of *Devon*, Earl of *Arundel*, Earl of *Albany*, Lord Viscount *Kellidene*, Lord Viscount *Townshend*, Bishop of *Exeter*, Lord Bishop of *London*) gave them the Thanks of this House in the following Words:

My Lords, with duty of the Committee,

I am commanded by the House to give your Lordships the Thanks of this House, for your having discharged the Trust reposed in you with great Exactness, Care, Fidelity, and Candour.

My Lords,

The Trust was as great as ever was reposed by this House in any of its Members. The Subject Matter of your Enquiry, a Conspiracy the most dangerous as well as detestable, big with Mischiefs of all Kinds, and of a nature of every thing that is valuable amongst us, carried on and managed in a new devised Method with the utmost Cunning as well as Wickedness, and covered with all the Delights the most cruel Denial could contrive: And which therefore required the greatest Penetration and Skill to be open. And the Enquiry, from them at such a Nature that it was requisite to trust them to your Lordships, look'd up as it were, without reading them in the House.

My Lords,

Your Lordships have fully answer'd the Expectations the House entertain'd, when they pitched upon you for this Trust.

Your Application in giving them so many Papers of affidavits and such Objections; your Candour and Exactness in Examining the Persons whom they saw, or any capable of giving any Satisfaction, and in representing what they saw, the Accuracy and Judgment of your Remarks, the Light you have happily given to several Passages in the Report of the Committee of the Commons, which, tho' in themselves just, were yet hid to Carity, by such as were inclin'd to have the Truth found out, given in a dark, a feasible Pleasure to cover Lord here that they had your good read, and shew'd himself to be a valuable to form a Judgment with a more Satisfaction to himself, concerning this Cause. My Lords, I have said, which the Action have undertaken to furnish with impartial Objections.

This noble Pleasure of being the Truth, notwithstanding its own Continuance to hide it, and of being actually enabled to come to my Lordships in a Matter of such Importance, has very actually and expressly broke out into to witness to a Resolution of returning the Thanks of this House to your Lordships, to whom they so much owe. And in Obedience to their Commands, I do, with particular Pleasure give your Lordships the Thanks of this House, for your having discharged the Trust in your Lordships; reposed with great Exactness, Care, Fidelity, and Candour.

April 10. The Bill to inflict Pains and Penalties on *John Plunkett* was brought into the House of Commons, so which *Plunkett* making no Defence, it pass'd that House on April 5, and was sent up to the Lords, who after passing the Bill, and *Plunkett* himself attend it, pass'd the Bill, which afterwards obtained the Royal Assent, and was as follows:

As *Act* to inflict Pains and Penalties on *John Plunkett*.

WHEREAS in the Years One thousand seven hundred and twenty-one, and One thousand seven hundred and twenty-two, a detestable and horrid Conspiracy was formed and carried on by divers Persons for inciting your Majesty's Kingdoms with Foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the Tower and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon His Royal Highness the Prince of Wales, in order to subvert our ancient happy Constitution in Church and State, and to place a Popish Pretender on your Throne: And whereas for the better concealing and effecting the said Conspiracy, divers treasonable Correspondences were, within the time aforesaid, carried on by Letters written in Cypher, and Words and significant Names, which Conspiracy, had not Almighty God in his great Mercy disappointed the design, would have deprived your Majesty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involved them in Blood and Ruin, and subjected your People to the Boasting and Oppression of *Rome's* Superstition and Arbitrary Power, for which execrable Treason *Christopher Layer* hath been indicted, tried, convicted and sentenced. And whereas *John Plunkett* hath been a principal Actor in the said horrid and detestable Conspiracy, by treasonably consulting and conspiring with divers Persons, to raise an Insurrection and Rebellion against your Majesty within this Kingdom, and

(a) B. 10. (b) B. 10. (c) B. 10. (d) B. 10. (e) B. 10. (f) B. 10. (g) B. 10. (h) B. 10. (i) B. 10. (j) B. 10. (k) B. 10. (l) B. 10. (m) B. 10.



to procure a foreign Force to invade the same, with a Design to depose your Majesty, and to place the Pretender on your Throne, by instigatingly corresponding with the said Pretender, and by engaging in a most execrable and villainous Design of laying violent Hands upon the sacred Person of your Majesty (whom God long preserve). Therefore, to manifest our just Abhorrence of so wicked a Conspiracy, we do hereby declare, under Regard for the Preservation of your Majesty's Person and Government, and for the Protestant Succession in your Majesty's Royal Family, and for the solid Foundation of our present Happiness and future Hopes; by the End that no Confessor may, by any Contrivance or Practice whatsoever, escape Punishment, and that all Persons may be by the Justice of Parliament for ever hereafter deterred from engaging in any treasonable Conspiracies or Attempts, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal and Commons in Parliament assembled, do humbly beseech your Majesty, that it may be enacted, and be enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That the said John Pender shall be detained and kept in close and safe Custody, without Bail or Mainprise, during the Pleasure of his Majesty, his Heirs and Successors, in any Gaol or Prison within the Kingdom of Great Britain, to the Custody of the Gaoler or Keeper whereof the said John Pender shall from time to time be committed, in pursuance of this Act, by Warrant under the Hand and Seal of any Secretary at State of his Majesty, his Heirs or Successors, Which Warrant or Warrants any Secretary of State for the Time being is hereby authorized and empowered to make; and that the said John Pender shall forfeit and lose his Majesty all his Lands, Tenements, Hereditaments, Goods and Chances whatsoever.

And for more sure detaining the said John Pender in safe Custody, be it further enacted by the Authority aforesaid, That if the said John Pender shall break such Gaol or Prison to which he shall be so committed, or shall escape out of the Custody of the Person in whose Custody he shall be, by virtue of such Commitment, That then the said John Pender, and all and every Person and Persons whatsoever, who shall be aiding or assisting the said John Pender in breaking such Gaol or Prison, or in making, such Escape, as aforesaid, or who shall by force take or release the said John Pender out of such Custody, Gaol, or Prison, during the Continuance of his Imprisonment by virtue of this Act, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer Death as in Case of Felony, without Benefit of Clergy.

In pursuance of this Act, John Pender was continued Prisoner in the Tower of London.

The same Day the Hall to assist Peers and Peonies on George Kelly, said Peonies was brought into the House of Commons, who after hearing Counsel for the Bill, and Kelly and his Counsel against it, said it is on April, and moved it to the Lords, who heard Counsel for and against the Bill, when Kelly made the following Speech:

#### My LORDS,

SINCE my Counsel have so fully answered every Article alledged against me, it may seem unnecessary to take up your Lordships Time by saying any thing for myself. And, indeed, it would be so, if my Charge were Ordinary or Particular. But, my Lords, I have been represented as a Person doubly guilty: First, in making the Treason for which I am now charged; and secondly, in doing it for other People. These are Crimes of the most heinous Nature, and if they were as clearly proved, as they have been strongly asserted, I should justly merit your Lordships highest Displeasure, and all the Pains and Penalties you could justly inflict upon me.

And since my Charge is so very extraordinary; since these Proceedings seem to be without any Pretence; and, that the Innocence of other Persons calls upon me for public Justice; I believe your Lordships will easily allow, That to be silent in such a Case would be truly monstrous, and too justly censured.

To enter into all the Particulars of my Accusation, would take up more Time than is reasonable for me to sit, or for your Lordships to hear: And tho' the many Inconveniences, Contradictions, and false Imputations which appear in almost every Page of the printed Reports, might flow the Weakness, Absurdity and Sophistry of them; however, I shall only beg Leave to touch upon these material Parts which relate myself, and my Defence to them.

The first Article which I had myself charged with, is, The employment of our Money to draw up three Memorials to the Regent of France, to solicit Foreign Forces to invade this Kingdom. And for Proof of this, the Examinations of the same Person, which are neither upon oath, nor so much as signed by him, (and whom the Committee of the honorable House of Commons have registered as a very infamous Person) are the only Evidence alledged against me.

And tho' the same Misnomering it might be sufficient to convince your Lordships of my Weakness, however, since to great a Weight has been laid upon it as a Kind of Evidence in another Place, it will be necessary to say a little more particular about it.

The two first of these Memorials, (viz. those before and after the Battle of Culloden) are but slightly mentioned: But the One pretended to be drawn up in December 1721, (and containing a Demand of 5000 Men) and a Letter said to be written the March after (to assuage the Government into a false Security, on the chief Things upon which any Person could be justly suspected); and how false both these Allegations are, has evidently appeared to your Lordships. For, had my Accuser been really employed to draw up any such Memorials, it is reasonable to believe, that he would have been of some, and especially of the last of them; since a Person so far from being so suddenly altered, may very well be persuaded to have had Thoughts of it for some Time before; and such Papers would,

no doubt, give great Weight to his Informations. But the Ministry have produced no such Copies; neither do they pretend to have them. Which is a very great Indication, that there never were any such Memorials at all.

Besides, there are two of his Examinations of a piece. Nay I have contradicted himself in almost every one of them. For in his second Examination he says, That these Memorials were all drawn up by the Order of one Henry Whiston (whom he really did not know, but took to be the late Lord Albemarle) without making the least Mention of me. In his third Examination he says, They were delivered to me and Whiston; and in his fourth he says again, They were all drawn up by the Order of Henry Whiston only. And in a few Lines after contradicts himself, and says, that the Heads of them were given to him by me and Whiston: Which are such Inconsistencies, as (your Lordships will easily grant) are not to be reconciled: And if his Memorials were no better drawn than his Examinations, I believe they were not likely to meet with any great Success.

As to the Earl Albemarle, how reasonable it is to believe, that a person in his Circumstances should venture to come into England, and live so openly here, as to intrust himself, and a secret of this Nature, to a Fellow, who (by his own Confession) did not know him, it humbly submitted to your Lordships. And as for my Part, it is very plain that I could have no Hand in them, since the Ministry in my Pocket-book (which I could have used as Disproof, against the concurrent Testimony of several Witnesses, plainly there, That I was not in the Kingdom at that Time) in which my Accuser pretends to have been employed. For, by these Minutes, and other Testimony, it appears, That I went to France the 26th of November, 1721, and did not return till the latter End of the next Month: And my Accuser himself owns in his first Examination, That he did not see me after my Return, till the January following; which makes it impossible that he could have been so employed by me in December, since I was not at that Month out of the Kingdom; and the few Days of that I was here, he owns he did not see me.

Nay, has the other Part of his Information, relating to the Letter (which he pretends to have drawn up as aforesaid) better Grounds—for, by the same Minutes, and by the same Evidence, it likewise appears, That I went to France the 26th of February after, and did not return till the Middle of April, which makes it as impossible that he could have been employed by me in March, since I was then likewise out of the Kingdom. Had this Examination been at any Distance of Time, it is possible he might be mistaken in it. But his first Informations must have been about the Middle of April, soon after my Return from France; for he contradicted the period taken up with him at that Time, that he was the first who in the Ministry's pen intercepted Letters. And the first Letters to be intercepted are entered in, in 421 Page of the Report made to the Lower House, to have been the 25th of April, 1721.—And, surely, he cannot be supposed to have forgot to know what happened the very Month before; especially since he has been so particular, as to name the very Day (Saturday) upon which he says this Letter was so drawn up. By all which it plainly appears, that this Article is not only groundless, but evidently false; and likewise, that he had no such Intercourse with me (as the Report pretends), since he has declared, That a never spoke to him of the Conspiracy; and that I could be a Month or any Time, and two Months at another, out of the Town, without his knowing any Thing of it. As to what is said of his covering Secretaries to my Lodgings, I believe it may be true; but it has been fully proved, That his Visits were never to me, but always to another Person who lodged in the same House. And I do solemnly assure to your Lordships, that I never was acquainted with the late Earl Albemarle, or with any such Person who went by the Name of Whiston: That I knew very little of my Accuser; in short, that I am conscious I never spoke to him ten Times in my Life, nor ever employed him in this or any other Affair whatsoever.

The second Article charged upon me, is, the carrying on a Treasonable Correspondence for the Bishop of Rochester. And for Proof of this, the Examination of the same Person is the only Evidence produced against me; wherein he says, That I frequently told him, the Bishop was concerned in such a Correspondence (and that I managed it for him, with other Particulars not worth mentioning. How reasonable it is, that I should tell such a strange Untruth to a Person that I know is very little of, and what Credit ought to be given to his bare Assertions, who has admitted such gross and notorious Falshoods in the former Article, will be submitted to your Lordships. And, in my present unhappy Situation, I cannot but think it a very great and singular Happiness, to have it publicly and honestly on a Oath of purging myself from so vile a Calumny; and of doing Justice to that most worthy and learned Prelate.

And I do solemnly declare to your Lordships upon the Faith of a Christian, That I never wrote or received a Letter of any kind to the Bishop of Rochester, or was party to any Correspondence of his in this or abroad: That I never showed him any Letter that ever I wrote to France, or even from one there by his Privy or Direction: That I am a very little known to his Lordship, went very rarely to visit upon him; so rarely, that I can confidently say he scarcely knew either my Name or Face; and I have not seen him above three or four Times these two Years past, and not above eight or ten Times in my whole Life.

I do further declare, That my Visits to his Lordship were always public, and I never went privately in a Chair to his House; always found other Company with him, who were generally Strangers to me; and never once mentioned his Name, upon this or any other Account, to the Person who first accused me; which, with the Evidence that has been produced of his own Confessions to that Person, is, I hope, sufficient to convince your Lordships of the Truth of it.

And as for the Dog, which has been brought as a Circumstance to prove this Matter, I do in the same solemn Manner declare, That he was given to me by a Surgeon at Paris, whose Affidavit has been offered



"*is to be produced*, and who, at that Time, I do verily believe, never heard of his Lordship's Name; and that he never was deluged for any Body but the Person I gave him to. And I appeal to the very Ministers themselves, if the Bishop Refused at Paris (who is constantly attended by that very Surgeon, and examined him about it) has not confessed the Truth of this Account to them. I do further affirm, That the Bishop of Rochester never saw him; never received any Letter or Message to me, nor (do I believe) by any other Person about him. Neither did I ever know or hear, That his Lordship had any Intercourse or Correspondence with the late Earl of Mordaunt, or any other disaffected Person abroad.

#### My LORDS,

"It cannot be imagined, that I have any particular Interest or Concern in this Matter; for I never received any Favours from his Lordship; neither do I owe him any Obligations but those of common Justice; and those I should perform, while I have so much Trust of my Side, to the greatest Equity I have upon Earth. As for the other Circumstances, which are brought to strengthen my Accuser's Examinations, and are set forth in one *Farrar's* Deposition, They will appear, I don't doubt, as groundless and unavailing as the Examinations themselves. For this Person swears, That another told him of this Conspiracy; that six or eight Bachelors of Arts Forces were to come from Spain to assist the Conspirators; that 200,000 men, were raised, and 800 Men regularly furnished for this Purpose in London. These, my Lords, are called, in the 31<sup>st</sup> Page of the Report of the Lower House, *The convenient and certain Proof of my Accuser's Examinations*: And I handsly appeal to your Lordships, if any one of them carries the least Colour of Reason or Probability with it. For can it be imagined, That such a Force should come from Spain, when there appears to be so much a Friendship between the two Kingdoms? Or that 200,000 men could possibly be raised among all the distinguished in England, in a time there was a Licence for it? Or 800 Men regularly furnished in this City, without a Discovery? These are such idle, inconsistent Tales, as (I am persuaded) can never have any Weight with your Lordships. Besides, my Lords, this is only bare Hear-say, and if the Hear-say of such infamous Persons (as, indeed, of any Person) be look'd upon as sufficient Evidence, I believe no Man in England can be sure of his Life or Liberty at Home, since any two People may talk him into High-Treason whenever they please; and the greater the Person who the greater his Danger always will be.

"The Third Crime which I had charged with, is, the Writing of three treasonable Letters for the Bishop of Rochester, supposed to be to the Pretenders, the late Earl of Mordaunt, and General Dolin; which Letters are said to have been sent by me to Mr. Gordon at Badgely, with Directions to be delivered to one Mr. Talbot: And for Proof of this, the Clerks of the Post-Office are produced, who swear, That those Letters were (to the best of their Knowledge) written in the fine Hand with an Original which was sent as a Specimen of it. Which Original has been found by two Persons to be my Writing, and consequently those Letters must be so too.

#### My LORDS,

"These Letters are dated the 24<sup>th</sup> of April, and the Specimen I kept the 30<sup>th</sup> of August, just four Months after. And how is it possible for a Person who receives such a Number of Letters to be sent to a Lieutenant's Hands, at such a Distance of Time, and what Weight ought to be laid upon this kind of Evidence; or upon that modern and mysterious one given by the Deceyters, in which they don't pretend to a Certainty themselves, must be submitted to your Lordships. And as to the Persons who have sworn to my Hand, I hope it will be considered, That one of them is a Messenger, who never saw any of my Writing, but the Super-scriptions of a few Letters, which (your Lordships may easily see) do not bear the least Likeness with what he has sworn to. Besides, this very Person was turned out of his Employment upon my Account; and a few Days after he gave this Evidence in the House of Commons, I saw a Paragraph in the News-Papers that he was referred to it again. And as to the other, it is to be hoped, That it will be likewise considered, that he is a Servant who attended me only about three Weeks, and was turned off for an infamous Address, which he has acknowledged himself to have been guilty of: Besides he has confessed, That he never saw me write, but as he went backwards and forwards in the Room; and as such a Distance as not to be able to distinguish one Character from another: And it has been proved by two Witnesses, (one of which was a particular Friend of his own) That he declared he never knew any Thing of my Hand; but was threatened by the Secretary, into the Affidavit which has been pleaded in the *Appendix*. And if that Paper had been my Writing, it is impossible they could be reduced to a Necessity of making Use of such improper Evidence, since no Person has been forced to procure better, since Numbers of People have been taken up, confined and examined to this very Point, and *never* sent to, nor more than once, for Witnesses to it. And tho' it might be proved by the very Report of the Lower House, that those Letters could not have come from the Bishop of Rochester; however, my Business is only to convince your Lordships, That I was not the Writer of them; and of this, I believe it is impossible to give clearer Proofs than I have done: For if those Letters had been dictated to me the twentieth of April (as the Report pretends) it must have been at his Lordship's House in the Country; since it appears by the Deposition of his Coachman, that he went there the 22<sup>nd</sup> of that Month, and did not leave it till the 6<sup>th</sup> of May.

"But as it has been proved, that I was in London all that Time, and if it had been permitted, there is not a Person in the Bishop's Family but would testify, That I was not then at his House in the Country; and consequently could not have written any such Letters for him. Besides, I have brought several Persons of Credit and undoubted Characters, who have all testified, that the Hand in which those Letters are said to be written, is not mine, nor any Thing like it.

"An Affidavit has been produced from Mr. Gordon, That he never received any such Letters from me, nor ever had any Correspondence, or even an Acquaintance with me.

"And it has been likewise proved, That Mr. Talbot, to whom those Letters are said to be delivered by Mr. Gordon, was in the Town the very Day upon which they are said to have been delivered to him; and *Budgely*: And if I had any such Letters to transmit, can it be imagined, that I would trust them to the common Post, when I had so good an Opportunity to send them by, or direct them to *Badgely*, where I have Post might as well have carried them to Paris? These are such idle, such evident Fictions, as, I hope, cannot fill of giving your Lordships the unsoft Conviction in this Matter; and, consequently, it is to be

Attended, is, like the rest, both groundless and manifestly false. But if any Credit is to be given to the Confession which my Accuser made to the Baron taken up with him, it is very plain that those Letters must have come from under *Badgely*, and, to say no worse, were at least calculated to carry on his own *low* and villainous Design.

"For it has been proved to your Lordships, that he confessed to have been employed by one of the Ministers, received 200 l. from him, and was to have 2000 l. more. That this Minister declared a personal Paper, upon some private Accounts, to the Bishop of Rochester, was returned in paid from the *Prode* of that *Hazley* Prison, and is *jeune* no; I think the Expressions were) in that Passage.

#### My LORDS,

"I say, if any Credit is to be given to this Confession, there can be no great Difficulty in tracing out the Source of this Part of the Conspiracy; and I am heartily ready to say, That there are some Circumstances which seem to give but too great a Countenance to the Truth of it. For, my Lords, He made this Confession as a Justice, when he was very well, he supposed to have spoken in the Sincerity of his Heart; when he saw his Villainy detected, believed himself to be in the great Danger, and depended upon the Parson's Affidavit (to whom he made it) to help him out of his Misfortunes.—And how particular the Profession is, and how faithfully I have been sworn, are Things but too visible, and too well known to the World.

"Besides, the very Cypher by which those Letters were written, (and which he owned to have received from that Minister) was actually carried to the Person to whom he gave it, and he confessed, That he put a Paper of Directions into one of my Drawers, by which (the Report says) most of the treasonable Letters were addressed. And it has been proved to your Lordships, that these Drawers were constantly open, and that he made free Pretence for being alone in my Lodgings, or very Night before I was sent to prison. And since he was the first that discovered my Ministry upon intercepting Letters, which he said were mine; it is an extraordinary, that such a material Part of his Evidence should be omitted in his Examination; or that the very first Letters so intercepted should be those alleged against the Bishop of Rochester: And if it is Originals of these three Letters were kept, I don't at all doubt, he might be enabled to prove by my *Assistant's* own Hand-writing, And he might be enabled to prove by his own, by annexing an Escape which proved fatal to him; and how visible the Hand of God has intervened in that eminent Prelate's Favour, by taking one of the Persons (who signed for his Detraction) out of the World, and giving the other Grace and Virtue enough to withstand all Temptations to his Persecution, are Things highly worthy of your Lordships' just and most serious Consideration, and so small Indication of his Innocence. And as to the Money which my Accuser owned to have received, That there was very sudden and extraordinary Change in his Condition; that from a low state of Poverty and Want, he soon arrived to that of a virtuous and most profuse Affluence, is a Truth universally known to all that were acquainted with him. But from whence this Change proceeded, or what real Grounds he had for aspiring that Honourable Position, I will not pretend to say: But if those Assertions be false (as with they may) it may be justly inferred, That a Fellow who was capable of vilifying one Person, may very well be judged as capable of doing so to another. And if his Veracity is not to hold good in one Case, there can be no Reason for allowing it in the other.

"The fourth Crime alleged against me, is a Number intercepted Letters, supposed to be written to, and received from the late Earl of Mordaunt, General Duple, and other disaffected Persons abroad. And for Proof of this a Frenchman has been produced, who swears, That he once took up a Letter at *Budgely's* Coffee-house, by the Name of *Nelson*, which Name (as it is said) some of the treasonable Letters were addressed by; and was, in a Paper of Directions, found in my Lodgings.—And that Paper came there, has been already proved; and as to the Person who has sworn to this Particular, I must observe, that when he gave this Evidence to the House of Commons, he did not know me, tho' he testified to me, and looked several Times earnestly at me. And for the Truth of this, I can appeal to most of the Members of that honourable House who were Witnesses of it. And he would still have possibly confessed in his Ignorance, if some privateHints (as I have been told) were not given him, or the same Method taken which has been done with the Number of other strange Fellows, who were frequently sent to the Tower, and had no other Business but to take a View of me. Besides, the People of the Coffee-house have testified the contrary, and that no such Letter ever came to their House. And tho' it be set down in the Examination before the Council, That I confessed to have taken up such a Letter, handsly appeal to my Lord Chancellor (if it can be worth his Lordship's while to recollect it) if he did not see me at the very Question two or three Times? and if I did not see as often as that? Neither is this the only Particular that is falsely set down, that Examination, And I do solemnly affirm to your Lordships, That I never did receive any such Letter, nor ever saw that Paper. Directions, all it was printed in the Report. And there is one of



being remarkable in this Correspondence, That as it began by Acca's Information, so it ended with his being taken up, immediately after a new Correspondence is pretended to be discovered, and in this likewise upon us, it has been suggested, that I Cyphers by Sir Henry Goring to France, and had Letters directed not to Sturges's and Slougher's Coffee-House.

But, my friends, no fact of Cyphers' was found in my Cuffeys, nor any papers relating to such a Correspondence; And the People of these Colonies have had all sworn, That I never ordered any Letters of any kind to be taken in, or received one, either by my own or any other Hand from them. Nay! one of them has sworn, That no such Letters ever came to his Hands at all; and the other Guys, That a Messenger sent to the Secretary's Office, was the only Person that ever called at his house for those directed to it.

As to the Circumstantiation of one Mr. Cressal to this Purpose, it was not to be withheld, That this Gentleman's Cressal had been published, as well as his Accusation. For I am confident he will not pretend to say, that ever he saw me wear a Lace in his Life, or give a Piece of Paper of any Kind to Sr. Harry Grey; and what Reason he could have for believing that we settled a Key for such a Circumstance, is very extraordinary. I have said, that the other Particular, which he has affirmed, is the Circumstantiation of Truth; Sr. I did not say, that I was separated from my Life, or give Captain Bruce any false Letter of Recommendation; neither had I ever the Honour of speaking to my Lord North and Grey, or to bring any ways known to his Lordship. And that I should mention him so familiarly by the felicitous Name of Yam-fan, which of all Names I should never make use of in that Manner, is not to be denied, and I am ready to yield to any Man, upon that point. Mr. Cressal himself has furnished me good a Reason for the Diff. of it.

As he has before so affirmed, That my Examination before the Court  
was set at Doctor F. Moe's House: The Doctor has, indeed, al-  
ways done me Justice in that Point and Mr. Taylor, who was all al-  
ways in Company, will, I am very free, do the same. And since Mr.  
Coy appeared to be in plainly mistaken in this Particular, surely he  
ought to have been so, and I am glad to see it, especially since he has  
now approved the book Reason for any of us, to read.

As in the rest of the so-called Letters, the People of the several  
Colleges have likewise cleared us from them; and all ability,  
That they never delivered me any such Letters, or received any Discon-  
tent from me about them; which I hope will be sufficient to convince  
our Listeners, that I was not concerned in any such Correspondence,  
nor that I have not been guilty of any such Abuse, as is charged in the  
last said printed Pamphlet relative to the Confession.

There are two sides to *Gomer*, in which I am sure I shall grow your *Widdows* friends, as to be heard, I wish that you could be so personal. The first is a Letter directed to Mr. *Gordon* at *Bristol*, with two *Advertisements*, which have been printed, and are supposed to be sent by my D'reditions, in order to have him and the *Birmingham* prepare themselves upon my Account: For in this Letter I said, *That the Inclosed is a Copy of a Note from the Porphy committed, and which he should receive.*

<sup>c</sup> *M<sub>1</sub> L O R D L*.

This Letter is dated the month of March, at which Time, and for five Months before, I never allowed any of the Uke, or Pape, or the Masters of Writing, any of the Perfors that could possibly have cognized me, to come near me. I have been guarded in a different Manner from other People in the Tower. My Wardens were put into the very Room with me, and ordered never to stir a Moment, Night or Day, out of it, which Orders they punctually obeyed, and were confirmed by Writing, to all my Assistants.

for me to write or put out any such Denunciations; the Officers, I don't doubt, will do me the same Justice. And when my Solicitor was acquainted, finding that Mr. Gordon's Affidavit might be of Use, I allowed it to be taken, a Perfit was immediately dispatched, and who brought in a Denunciation from those which have been printed. And my Solicitor has taken the Liberty to print it, and to send it to the several great Managers of the Periods concerned in this Affair, by which I hope, I shall be able to give your Lordships the clearest Conviction of my Innocence at this. And so I formally assure, That I never knew any such Denunciations, nor have I any of the Names of Adversaries before any of them, never heard of the Names of Adversaries before any of them.

[illegible]

“ Their, my Lords, are the chief Crimes which I am charged with, and very great ones they are, had they been in any Degree made out against me. I am a Stranger to the Methods of legal Proof, but have been told by Counsel, That the greater a Person's Crime is, the clearer the Evidence ought to be against him; and how weak and insufficient the Proofs produced for this Purpose are, and how clear and convincing those which have been offered in my Justification, but, I hope, evidently appeared to your Lordships, and given you entire Conviction of my Innocence; and that all the Crimes alleged against me, are without

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not the least Colour, Foundation of Truth. But how much have suffered for this impious Cause, and what extraneous Means have been used to excite selfish men, to rise up in the way of your Lordships' Cause? I have said, that I regret the weakness of your Lordships' Cause, and I am sure, that I regret the weakness of the Cause itself. But, without ever affecting any partiality, I must again be allowed to suffer a long and close Confinement, where the Expenses must be supported by my Lordships. To have Numbers of People, and even in these Considers of the Maxwell Hall and Conduits, taken up, examined, and tampered with, upon my Account, and Myself left for my Witneses: To have a Servant (who was turned off for his ill Behaviour) brought as an Evidence, and my most intimate Friends implicated for not swearing against me; are Headships and Proceedings, I believe, hitherto unheard of in England; and such a Usage your Lordships will, in your next Willens and Jurors, think fit to redress. All which is of a Force which an inflexible Oath made to myself by one of the Under-Secretaries, Sir, John Lubbock, after I was first examined, came to me with a Medall (as he said) in front of his Supper-table, and to me he said, *That I had now a very good Opportunity of proving myself, and that he was not just to give my own Confession.* And he then declared himself an entire Stranger to the Cause, yet, and was very ready to find that No! he had been to take an Opinion of me, he seemed to wonder that I would neglect to good an Occasion a favouring myself, especially when I might have any thing I played to life for. Last Authority that Person had for this Meddage, or the rest of his Anti-proceedings, I will not pretend to say: But as I have been so ruined and utterly undone by them, I hope your Lordships will take my Sufferings, as well as Circumstances, into your Consideration, and mitigate or indemnify any future Sufferings that I may be liable to, and I am sure, that I am a Person highly deserving of your Pardon, and not a Criminal concerned in any Intimations against the Government.

<sup>4</sup> As far as Circumstances, there are but two well known to the Theist.

As for my Circumstances, there are but too well known in the World. And my Content with my Gratitude to the late and perfect Content. Stability of my Health is my Consolation (which I never had the Honour to see his Lordship was) in such a Situation of my Circumstances, is very good, and I am in such a Manner of an Allowance from the Government; And his Lordship, the greatest, has been kind as to get it paid. But the Officers of the Place can inform. That this Allowance has not been consented to any private Use of mine, but continually given to the Persons appointed to attend me. And I must take Leave to stir up your Lordships. That it has cost me more Grace I was less than, than the Government has now lent me really more in the World, and I must freely become a Sacrifice to my Necessities, if not let at Liberty by your Lordships great Clemency and Compassion. If I have dropped any Expression which may seem to be agreeable to some particular Person in Power, I could with that my Defence but not laid out in such a manner as I do not seem to be so fully protected from any Retribution for such a Step; as I am from a sincere Endeavour to give your Lordships the clearest Satisfaction by my Innocence. And since I could not meet their Favour, I shall always endeavour to preserve their good Opinion.

[illegible]

\* *M. L. O. R. D. 3*

\* The still extraordinary Bill that I believe every puffed in England, was that of the Earl of Stafford; and how much personal Prejudice was in his Prosecution, and how fatal that Bill proved in its Consequences, I need not mention. I saw the Royal Majesty himself, in his dying Words called it, An unjust Sentence, and imputed all his Misfortunes to it. And pray, my Lords, why was that Sentence unjust, but because it was not supported by *Law*—And, in the ever glorious Honour of this House be it told, That when the Proofs upon Sir Trial were not found to be sufficient to find him guilty. But when this extraordinary Motion was taken, and the Tenth of the Times were down their usual Justice, and the blood-gate of all those Miseries was opened, which ever willows and willows in the Constitution, And of which some of your Lordships had been and bloody and bloody a Serf, in to declare in this vast House, that they would be sooner torn in Pieces, than come into any illegal Proceedings; and to sell a Sacrifice to the Love and Liberty of their Country.



















and to send it into print. But Barchmont? Do the Lives and Liberties of Englishmen stand upon a Foundation? If they do, I presume to say they are very precarious, and the most sacred Man alive cannot say he is so.

I beg your Lordships indulgence to observe further, that this heavy Charge against my Lord Bishop is supported only by *Assurances*. And with such a *Law Assured* has been always look'd upon in criminal Cases, in our Attorneys may be given.

I shall trouble your Lordships but with one; which is full to the Purpose, and of the greatest Authority: I mean the Refutation of your Lordships in the Case of Sir *Samuel Barnardiston* in 1753. He was prosecuted for writing Letters, alleged to be sedition, and highly reflecting on the Government, and the publick Justice of the Nation; and was found guilty, and fined 1000*l*. He brought a Writ of Error in this most Honourable House, and your Lordships were pleas'd to reverse that Judgment; for that the Information being grounded on *Letters*, which in themselves were not a Crime, but made so by *Assurances*, your Lordships were pleas'd to declare, that *Assurances* and *formal Confessions* time ought not to be allow'd; for all *Assurances* should be given, and the *Crown assured*.

Now if it can be happen'd, without any *Assurance*, that my Lord Bishop was the Letters charged to be written by him; even then this Case is the same with Sir *Samuel Barnardiston's*. For the Letters are not criminal in themselves; nor can be made so but by *Assurances*, and *formal Confessions*. Nay, I presume to say, there is not one Part of the Charge but is fully purged by *Assurances*, and *formal Confessions*.

I will trouble your Lordships with insinuating only one Letter, which is that of the 20th of April, written to Mr. *Tindal*, and published 1758. With the *Assurances* is thus. 1758, *Assurances*, a person whose proper Name begins with an R, *Assurances* the Bishop of *Rochester*, did write to Mr. *Tindal*, *Assurances* the *President*, that, notwithstanding his Oppressivity, *Assurances* an Opportunity of raising a Rebellion in England at the Time of Election of Members of Parliament, had elapsed; I, *Assurances* the Bishop, agree with you, *Assurances* the *President*, that another, *Assurances* another Opportunity of raising a Rebellion in England, may offer before the End of the Year, *Assurances* at the breaking up of the Camp. Your Lordships will please to observe what a *Superfluous* and *unnecessary* (if I may so say) there must be to suppose such a Charge, and without *Assurances* no Part of the Charge against the Bishop can be maintain'd. And therefore I humbly beg, that the said Rebellion which induced your Lordships to reverse the Judgment, until Sir *Samuel Barnardiston*, will prevail upon you to reject this Bill.

To what I have objected, I imagine it will be answered, That your Lordships are now sitting in your Legislative Capacity; and that in your Legislative Capacity you are not bound by the *Form of Law*: But I humbly submit to you, whether you will think fit to proceed according to the *Rule of Law*, or not according to the *Form of it*.

Men's *Lives*, and *Properties*, are to be try'd and determin'd *according to the Rules of Law*, and the Proof in such Cases must be *legal Proof*. And I appeal with great Defiance, that when your Lordships proceed in your Legislative Capacity in other Instances, you proceed according to the *Rule of Law*. As in Bills for enabling Persons to sell, or give *Estate*; or for and *as Rivers navigable*. If the Title or Property of any Person come in question, your Lordships are pleas'd to hold the Parties to *strict legal Proof*: And why are in Bills of Attainder? Are Bills of Attainder (whereby Men's *Lives* are forfeited, their *Estates* confiscated, their *Elders* corrupted, and their *Posterity* undone) of less account than Bills to enable Persons to settle their *Estates* for the Benefit of their Families? I humbly apprehend that your Legislative and Judicial Capacities are here to be united, that they cannot be separated. For a Bill of Attainder is a *Condemnation* by Parliament; and your Lordships always hear and judge whether a Party be Guilty, before you condemn him. Will you then be pleas'd to judge, and determine upon *legal Proof* in one Case than in another? Can it be conceived that your Lordships will not sit in the same *Rule* to both your Capacities; or that you will not have an equal *Tenderness* and *Regard* for the *Lives*, *Livings*, and *Estate* of the Subject under Capacity, as in the other? When a Man *fin* from *Tindal*, he gives Judgment against himself; and when a Person *accused* itself by corrupt or indirect Means *usual* or *unusual* ways the *Witness* against him, then he is the Cause, why *strict and legal Proof* cannot be had. And that may be a Reason why *strict Proof* should be admitted. But in Cases not attended with either of *these Circumstances*, so say that *less than legal Proof* is sufficient for a Bill of Attainder, is to affirm that PARLIAMENT OPINION alone, without Proof, is a sufficient Foundation to pass a Bill of Attainder. And how hardly that would found in the Case of *Assurances*, I humbly submitted to your Lordships.

My *Letter*, by your *Law* I might count ge according to his own private *Opinion*; but must be govern'd by the Evidence given before him in Court. For the *Rule* is, *Nisi iudex, quod videtur per iudicem*. A man must *fin* in *Parliament*. And if Men's Rights and Liberties were to be determin'd by private *Opinion*; how precarious would the *Lives* and *Estate* of Englishmen be? The most innocent Man could not be safe; the wisest Man could not *justify*, where it would end; and Englishmen no longer deal of the Excellency of her Constitution.

It is a *Rule*, both in Law and Reason, that *Nemo bis punitur pro eodem Delicto*: And yet that may happen to be the Bishop's Case. For the Charge in the Bill is general, intending to raise a Rebellion, and holding *treasonable* Correspondence in order to bring in foreign Forces. But there is no particular Bill charged upon him. Now if he should be indicted for either of *these Species* of Treason; and particular *Over-Acts* of such Treason should be alledge'd, as *buying Arms*, and *raising Men* for the *President*, and the *Over-Acts* should be proved by *good Proof*, he might be condemn'd and executed for it. For he could not plead this Bill in Bar to such *Indictment*; because the Indictment would not be for the same Facts, these being particular are charged in the Bill. And yet it may happen (as I think that my Lord Bishop has been intend'd and try'd for the Treason in itself) in this Bill: As in the Case of *Hampden* and *Pine Horn*, which I lately mention'd. For Mr. *Hampden* was try'd for raising and executing to raise a Rebellion, was found *guilty*, and was afterwards try'd for

High-Treason for the same Fact. And he intend'd on his own behalf for the same Fact, and did not intend it by the *Common Law*. And in *four Acts* of his Life, he was indicted for High-Treason, and pleaded an Impeachment, and at last it was so that the Bill was not pass'd. But the Plea was over-ruled: For their being a party to the Bill, an Averment could not be supported, because he could not swear that that was not of Record.

I humbly hope your Lordships will excuse me for taking up a Part of your Time. But the *Materiality* of the Matter is of such a nature, that I cannot, and the *Weight* of the Subject, demands that I should not only thank your Lordships for your great Indulgence, but also for your great Zeal. And it is, as a *Lawyer*, that my Zeal for my Country is not as a *Politician*, affecting those *Law* which I apply to this Case. For of *British Liberties*, I have a deep and true Conviction which may be improper, I must humbly beg your Lordships Pardon. And if there is a Difference between your Legislative and Judicial Capacities, I think whether your Lordships will be pleas'd to give that Judgment by your Legislative Capacity, which the Council for the Bill says in my Oppression, admit you could not give in your Judicial; And therefore, I beg your Lordships will be pleas'd to reject this Bill.

Mr. *Wynn* (his Lordships's other Counsel) spoke next.

May it please your Lordships.

I am at Council for this Reverend Prelate; and however unwilling I know Apologies to be before your Lordships, who are pleas'd to hear what the youngest and most unlearn'd of all Persons here say, yet it becomes me to try something for my last Appearance at your Lordships Bar, as a Matter of the last Consequence, and it was the wish of the Reverend Prelate, rather to make his Defence by such means as might, as if he was persuaded, that his Cause needed not the aid of Art or Experience, in order to move the Favour, or to temper the Reason of his Hearers, which he knows to be but as any temptation to Persuasion, in comparison of Truth and Innocency. He says that, who he hopes will regard plain Facts and plain Evidence. Truth, notwithstanding all the Disadvantages of an unskillful Plea, will, he hopes, at last prevail.

For my own Part, since your Lordships have offer'd me for this Council, I shall be under no Apprehensions of Danger or Disgrace, in performing my Duty to him, in humbly offering every Thing I think most due to his just Defence; and I will not doubt, but I shall do it as favourably as I can. And though it is his Lordships's Merit to be ready pre-judg'd in another Place, and to be condemn'd without Trial by some few vulgar, mislead Apprehensions; yet he hopes better than of your Lordships. He does not doubt, but that your Lordships, who are Masters of last Importance proceed with Calmness, Justice, and Prudence, will be careful not to derive from such Misdeeds in a Matter which demands the greatest Caution and Deliberation: For it is the Case of the *Liberty*, the *Fortune*, and (if was going to say) the *Life* of a most learned Prelate; because some Circumstances of his Bill are cruel and extreme, that it is little better than if it had affected *Life* itself.

Every one that is a Friend to this Bill, must allow, that it is not in itself offer'd without an evident and correct Necessity. But, I hope, my Lordships, though the Grounds and Suggestions of it were true, and duly ponder'd, yet that there is no such Necessity.

In order to discover whether there be any such Necessity or not, I shall consider the End proposed by this Bill, and then weigh the Means which by 'tis hoped to attain that End; and whether this Bill be a necessary, necessary, or convenient to attain it.

The End, I hope, is the Security of the Government, and the Execution of Justice, and it ought to be pursued by all regular and legal Means; and therefore, before I speak particularly to the Means proposed in this Bill, or the Proofs which have been offer'd to make them so, I shall beg leave to say something as to the Manner and Method of the Proceeding. Next to last I shall propose to question your Lordships's Power in such Cases: But, as on the one hand we must assure your Lordships may, and have in some Cases exceed your Legislative Capacity, in declaring that a Crime which was not to be before, or by itself, or by any extraordinary Punishment on common or ordinary Crimes, or by the other hand, tell that is done, I hope I am at Liberty freely to represent the Inconvenience, the Injustice, and the Imprudence of such a Declaration, as of passing such a Law, in the Case now before us. If it should become a Law, his Lordship must dispute it to be lawful, but submit to it as just, wherever Hardship he may, as the *Rule* is of his own House, contrary to conduct upon him by it. But then, to God, this is yet no Law, and thus I am at full Liberty to represent the Injustice and the Unconstitutionality of this Bill; and to say, that not a proper Occasion that needs or calls upon your Lordships to take your Legislative Power.

I might here enlarge upon the Injustice of all Laws made or pass'd for one particular Case or Person, and no other; that they are against the Common Law, and the Common Right which every Man is entitled to, in the Place or Community where he lives, by the Law, in the Nature, ought to be Rules for the general Order, and Good of Society; and Natural Justice would surely in all such Cases the Preceptibility of your Lordships's Resolution, by this Question; Whether Law hath been transgress'd? If he hath transgress'd any particular known Law, he is undoubtedly subject to undergo the Pain or Punishment enacted by it, when the Proof is duly and fully made which it requires. But if there is no such Law yet in being, or if there is such Proof as that Law requires to suppose him guilty, will your Lordships introduce a new Law, or a new Sort of Proof to make him feel that Methods are to be taken, the most innocent Man is not safe, the wisest Man cannot judge what is an Offence, or in what Degree what Proof is necessary in his Defence, or how he is to be try'd? It is vain does the Legislature every Session provide Laws, if it is not







dom of his next Parliaments have reversed with Mirks of Infamy and Deceit.

How much more is there to be said of Sir *John Fenwick's* Case? He had been indicted upon the Evidence of two perverse Witnesses: There had been a trial preceding Trials at Law, by which it manifestly appeared that he was equally concerned with those that were found Guilty. Sir *John Fenwick* had likewise submitted himself from Justice, and was taken in a Circumstance always supposed as a strong Presumption of Guilt. I had protested his Trial by Officers of Discovery, the Reason of which it is now appeared to be, that one of the King's Witnesses went with him himself beyond Sea, and altho' that Witness was gone, yet his Evidence not only remained in Writing signed, and upon Oath, but was attested and confirmed by some of the Grand Jury themselves that signed the Bill, and by others of the Petty Jury, before whom this Witness had given the very same Evidence. There was a Proof likewise that he had attempted to corrupt the remaining Witnesses, as well as some of the Jury. These were Circumstances upon which that Case was founded. No Man can say, but there was a reasonable Evidence, tho' not strictly legal; one full and positive Witness, and many strong undoubted Circumstances; and yet the Opposition which that had in both Houses, was very great. Whether the Reason that prevailed for the passing of it was sufficient, becomes me not to enquire: Since it is still a Law, I must presume them just.

But is there any thing, say I, Lord, like that, in the Case now before your Lordships? Has there been any Attempt to withdraw from Justice? and yet that Honorable Committee have been pleased to observe, his Lordship had Notice that he was to be sent hanged down the river before he was taken? Has there been any preceding Trial, in which his Lordship's name was mentioned as an Accused, much less in this Bill proposed a principal Manager and Director in the Conspiracy? Or, in that one Trial which hath been, has any such attempt to derive the last suspicion of Guilt upon him? Can any one say he has used any Methods or Artifices to avoid or protract his Trial in the ordinary Course of Law? Has he not, on the contrary, (and as one of the strongest Proofs and Conventions of Innocency) sought and petitioned to be tried? Yes, my Lords, he has applied in all Courts, and in all Places, in the most earnest and legal manner, to be brought to Trial.

Has this Reverend Prelate used any indirect Measures to corrupt or withdraw a Witness? And yet Sir *John Fenwick* (who is the only Person supposed capable of selling himself) has well known, had his full Liberty, even after his Lordship's Application, but would not bear to be Recognized by one Day's Non-appearance. No, my Lords, nothing of that kind has been attempted to be proved, nor so much as intimated in this Case; nor is there here before your Lordships any one positive Witness of any kind. Nor is there the Sanction of any one Oath here, or any where else, in any one material Point against his Lordships. What need therefore, or what Rank can there be, for this Bill? Surely your Lordships will not pronounce a Judgment that shall affect any Man's Life, Liberty, or Fortune, without some Oath, and on Circumstances so widely different in every respect from those of Sir *John Fenwick*.

And if this Case be so far from Proposing any Similitude with that of Sir *John Fenwick*, I am sure it has much less, or rather none at all, with any of those before-mentioned. For we hope, after so long and full a Discovery of the Conspiracy, and those many just Methods of Preparation against it, the Danger cannot now be so great or urgent, as to require to precipitate a Retribution. His Person, your Lordships, is safe and forth-coming, and the Courts of Law in their usual and open Course; and at this Time filled with such learned and reputable Judges and Ministers of Justice, that they are equal and able to deal with the most bold and daring Offender.

There can be little Reason therefore, now as at all we hope, for your Lordships to wish I were to exert such an extraordinary Method of Proceeding.

But there is this further Objection against proceeding by Bill, that it makes not only your Lordships pronounce Judgment against one of your own Members, and a very notable one too; but it makes the King himself, without hearing any Word of the Defence, in Person, pronounce a Judgment upon his Liberty, which his own personal Presence must be necessary to which the Common Law then else has wisely left to be pronounced by his Justices, even in those Courts where he is always supposed to be present. But in this Instance, when something which must be still more dangerous to him, in that it must exclude a Branch of Parliamentary Privilege, which his Majesty would bestow, and it must be done Surprize to every good Subject, to find in Royal Judgments so highly intimated.

There is another Thing, which I persuade myself, your Lordships will fully consider, that if this Method of Proceeding by Bill be encouraged and gone forward, it will put an End to our Consideration of Justice, which your Lordships were formerly so justly zealous of, as not to admit at any time the least Compulsion. The Law of House will hardly care to appear any more than your Lordships as Accusers or Prosecutors, when they can be easily perjured in their Judicial Capacity. And every such Bill (especially against a Member of this House) is a direct Intemperance and Desecration of that high and valuable Privilege, and will upon a Door to force other Members to the Passage, which I had much rather your Lordships would suggest to yourselves, than I repeat. It has been always desired, without Doors, whether your Lordships could begin to be by a Bill, as well a Commoner; but I think it may be more justly desired, whether the Lower House can begin such a Bill against any one of your Lordships; and that this Bill should have a better Consequence, it will shew itself so far, as to bear no Question thereon. My Lords, I need not far, how much more proper it would have been for the Lower House to have left this Matter more to your Lordships, because it has been so often related by your Lordships Predecessors, that the *House of Commons* have no Power of Judgment or Decision against any one, but in Matters concerning that House. Whereas this is a Case of Passage, not the Parliament, and the Election of a Member of the House. There is an Intestate on your Lord-

ships Journals, where the Lord *Perkins* voluntarily surrendered his and Dignity of Viscount to the King by Force, and yet your Lordships unanimously reverse that Judgment, and declared, that no Place, Judge of, or intermeddle with Dignities or Rights of Peers; but your Lordships own House.

And that, my Lords, of those Reverend Bench, will surely consider, that a first Blow will give to the Intemperance and Party of the Church of England. They have more than ordinary Reason to be jealous of increasing such Precedents, and of introducing Methods of proceeding, which have already prevailed in other Courts, and in the House of Commons, and the Cases where and where those Methods are to be exercised. I don't say the Parliament cannot do this, or any other thing which they think proper, but the Metropolitan, these Lords know, is attended with the Power over his Suffragans, or a Privilege Synod, and in plain, the Law of Excommunication no other Power that can regularly depend. For to mention but this Influence, if on this should be joined, whether a Bishop be deposed or not, his Court will still still be able, could only write to the Archbishop to depose him. And to prove this Affirmation, I will not name Bishop *Stillingfleet*, or of those great Ecclesiastical Authorities, (tho' possibly they may be excepted against, as Persons who have too much Interest in the Cause to be impartial) but it is to be said down by my (as) Lord Chief Baron *Arden*, in his great Argument of Ecclesiastical Constitutions; and by my Lord Justice *Holt*, and the Count of *King's-Bench*, in the Case of *Dr. Hough*, Bishop of *St. David's*.

All Predecessors, my Lords, will increase; and the Secrecy and Controversy of Light may against your Lordships faced Order to rest, to be, or to forget a Precedent so grateful and pleasing to them as this will be. Every one knows the Destruction of the Frailer Religious Houses, made way for this of the greater. A Time has been when the Lordships Predecessors were all excluded and squandered; and it has been attempted, even since the Restoration, to take away Deans and Chapters. I am far from apprehending any such thing as present, and I hope it will never enter into the Heart of any Man. But, my Lords, I confess I thought as built at this Time of such a Bill as is now before you, to deprive a Bishop and Dean at once, not only of all his Dignities and Brackets, but from the Exercise of any Part of his holy Episcopal Functions? And I will say, that if this Bill should pass, and by any such Lordships Affairs, such a Design will be rendered more easy and familiar, and much more unopposed, by all Mankind.

Give me leave, my Lords, next to observe, with what Caution and Moderation other Parliaments have proceeded, even in those Cases when they have thought proper to exercise their legislative Capacity, as in the Statute 13<sup>th</sup> of c. 19. for Imprisonment of Sir *Thomas*, and many other such Cases, which were too great and serious to the ordinary Course of Law, but yet too less and inconsiderable to require the Declaration of his Majesty's Privilege, but even so in all his Majesty's Power of Bailing within that Time, or any his of the Privy-Council, if they judged proper. Their further Obstinacy and Impetuosity, exceeding another Act, 14<sup>th</sup> of c. 4. to detain them a Year longer, it was (still) under the same Exception. At the End of that Term an Act was made, empowering the King to detain them during his Pleasure, 16<sup>th</sup> of c. 1. After that, two other Acts passed, empowering the late Queen and her present Majesty to detain them. What the particular Reason of these Alterations were, I cannot take upon me to determine, because the Acts themselves are wholly silent; but, my Lords, for we were the prudent and moderate Steps taken by former Parliaments, even in that bold and wicked Conspirator.

I may also justly take Notice of the Prudence and Clemency of the last Parliament, when there was so loud and so general a Cry for Justice; and when the Necessity of the Time seemed to require a more speedy and extraordinary Degree of Punishment than the Common Law was so qualified with; but with what Difficulty, with what slow Paces, and with how many tender Circumstances did that Bill pass? Your Lordships will easily imagine, that the Pursons I have said are the Law of the House of the House of Commons.

It would ill become me, my Lords, if I had Inclination, to exult in Difficulties, or to exaggerate any of these Gentlemen's Misdeeds, by the Service of the Reverend Prelate now under Consideration, might me just to mention what a State of Confusion they had reduced the Kingdom to. How many Thousands have left, and Bill feel the pernicious Effects of that Scheme? Tho' their Crime was not particular Apparent, nor determined Punishment in our Law, yet the (14<sup>th</sup> and 15<sup>th</sup>) Laws of other Countries could have said, that these Gentlemen, the Robbery of the Publick Manners, was such an Intemperance, as to affect that the Punishment of it was Death, both in the Principal and Accessories. How different and how much more the Parliament would have been, in comparison of that, I need not mention, as I have seen known, how tender and sparingly that it has been used, and even executed upon them, and how much they had enjoyed of the Signals and Pleasures of the Nation.

Let us not then follow every Precedent that has been, but the prudent Precedents of more rare Times, and of good and general Repute. Let us not be ambitious to surpass the Proceedings of remote and arbitrary Men, which we or our Posterity may have Cause to regret of hereafter, but let us imitate such only as are agreeable to the Law of



Constitutions, such as are grounded upon true Reason, and the Principles of good Justice.

Having thus spoken as to the Method of these Proceedings in general, and shewn (in some Measure, I hope) that they are contrary to the Publick Will, contrary to the known Rules of Law, and the common Right of the Subject, I shall, with your Lordships Favour, next examine the Foundation and Grounds of this particular Bill. As for those general Propositions and Allegations with which it is introduced, and upon which the Counsel for the Bill have spent so much Time, there is no Necessity, as we conceive, to answer to. We are here before your Lordships only as Counsel for this Reverend Prelate, one single supposed Conspirator, and it would become us in the least to controvert, that there has been a Conspiracy formed and carried on by some Persons abroad, and by others at home, after it has been so solemnly relolved by both Houses of Parliament. Nor can we deny, but that Mr. Ligon has been tried, convicted, and attainted of it: But we are yet to seek how these Things have any Relation to the Case before your Lordships; or how that unhappy Person's Case comes to be considered and made Part of our Lord Bishop's, as it is by this Bill. We may justly appeal to every one that is or read that Trial, whether this Reverend Prelate's Name is so much as mentioned in any one Line of it, whether there are any Grounds to think, from any of that Gentleman's Papers or Examinations, that his Lordship was privy to, or in the least concerned or acquainted with the Person or his Intentions: And I dare say, his Lordship is as much surprised at the Boldness and Folly of his Scheme, as he is of the Wickedness of it. Nevertheless, notwithstanding this, in his Majesty's Bench, in this Bill as a principle Active and Direct in the forming and carrying on of those very schemes and Designs for which that Gentleman has been convicted. And as to the Cyprians and Papers of Phislar, I am as much at a Loss to imagine, upon what Grounds they should be given in Evidence against the Bishop, than 'tis not to be asked as suggested in the Bill, nor is there any thing throughout the Report or Appendix, that in itself charges his Lordship with any Intercourse or Correspondence with him.

It is strange, my Lords, that Persons Thoughts and Intentions, so vastly different in all other Respects, should yet enter in such unnatural Projections and wild Undertakings, without some previous Disposition, some false Considerations, or Acquaintance one with the other; and yet so strange and unreasonable as it is, this Reverend Prelate is charged in the very same Manner by this Bill, with consulting and endeavouring to raise an Insurrection, to procure a foreign Force to invade the Kingdom, and corresponding with the Pretender, as Perle is employed by him, knowing them to be so employed. And if these Facts, my Lords, had been duly and legally proved, I should have very little to say in his Defence, but loudly protest the Mercy and Compassion of this Honourable House, for they are Offences in themselves so great, that one who is guilty of them is not capable of Amendment, nor is the other of Escape or Remission, by any Thing I can say. But if the Facts have not been proved in the whole or in Part, the bare Affirmation or Allegation that there is only *Brass's* false, and does his Lordship no more than any other innocent Man, whose Misfortune it is to fall under so unjust Accusation. Or if those Circumstances which have been proved are not criminal in themselves, they shall not, we hope, by Intimates and Deductions, be heightened into Crimes; and the Number or Complexity of them shall never make them exceed their Nature. And, my Lords, we hope, that notwithstanding all that has been asserted, alleged, and moved, this Reverend Prelate will still say, not only in the Face of his Bench, but with a safe Conscience, and upon an impartial and unbiassed Recollection, that he is not Guilty of any one of the Charges contained in the Bill: That he is not conscious to himself of any one traitorous or unbecoming Exploitation, or of any one Degree of Offence committed by him, with respect to any of those Charges. He can still say, that he has not acted in direct Violation of his Oaths and Obligations, nor to the Scandal of Religion or his Majesty's Honour. I am, my Lords, I should not take upon me to say this for his Lordship, or any Man alive, unless I thought we had a still and positive Answer to every thing that has been said, which I was verily persuaded we had a full and a legal Proof to encounter all that has been offered on the other Side; or unless my Intimations told me, that many things in the Course of their Evidence were utterly false and groundless; I say, as we shall prove (if my Intimations are true) by the full Proof, and the most insuperable Evidence that is possible in the Case; by such Arguments and Reasonings as we think are clear and undeniable, by some Witnesses we never saw nor heard of before, consequently the more credible and impartial; by others, whom I am sure we had no Opportunity to lead or impeach; and all as I am formerly glad, that it is contrary to the Rules of your Lordships House, to move their Testimony by Oath. In short, every Circumstance, every Part of the Evidence produced against us, your Lordships, in the End, we hope, will find true Ground for us.

There is not one Thing which I take for granted, from the Nature of the Evidence that has been offered, that it is admitted as fully by the Counsel for the Bill (as if they had had for ex. re. re. Terms) that there is no legal Evidence against his Lordship in all they have offered; or else this extraordinary Method of Proceeding, and this new Sort of Evidence had never been set up. Nay, I am sure, if it is a Sort of Force upon those honest Gentlemen, it will be useful in many and various Ways, to maintain to many good Persons, which have not the full Colour of a legal, or even a reasonable Evidence, and would never be allowed, that they will know, in any Court of Law or Equity. And though your Lordships have been pleased to permit those Papers and Letters to be read, your Lordships do not (as I suppose) really declare or determine them to be Evidence; but were willing to hear all Things, and afterwards judge how far it was reasonable or fitting to admit them in as Arguments in your Lordships Judgments. And whatever Opinion your Lordships might be of

on the two former Bills, as we are Strangers to them, so we hope we are not precluded from offering any Thing further, which they ought not to be allowed in this Case. If it be your Lordships Pleasure at last to adhere to that Opinion, or to retort the like in this Case, we must submit.

If there is any thing certain in Law, or agreeable to Reason, it is this, That in all criminal Charges, the Evidence ought to be by which it is proved, and that the higher and more remote the Nature of the Charge is, the more clear and undeniable the Evidence ought to be by which it is proved. Now I believe your Lordships do consider as one View (as far as it is possible in so various and perplexed Facts) the Methods made use of to prove his Lordship Guilty, and what they have offered to your Lordships under the Name of Evidence. What Words have been capable, and sometimes where they have not been capable of good Sense, an arbitrary and vicious Interpretation has been put upon them. Whose Words have been plain and proper for the Cause, and what, considered separately by themselves, it was impossible to put a criminal Guilt upon them. The Writer is surprised to have found mysterious Meaning or double Examine; or else they are complicated and thrown together with those which will alter some criminal Meaning. In other Letters his Name and his Name to Men, are supposed to be used for those of Women, and the proper and usual Appellation of Women for those of Men; and because one fictitious Name will not answer all they would have it, the Names are often divided; one and the same Person is supposed to pass under seven or eight different Denominations: And often two or three Names in the same Letter, without the Compass of two Lines one to the other, are urged to stand for the same Person. Some Letters which are writ of another, and speak in direct Terms of a third Person, they would have us mean the Writer himself, though as often without any Name, Date, Subscript, or common Acknowledgment at all. Books of Account, Manuscripts, and common Accusations Terms, which from proper for the Person and the Occasion of the Correspondence, and the Nature of the Letters, which every one knows the true Meaning of, and carries all the Appearance of Reality, are very particular and exact in the current Press at that Time, by a new Kind of Metaphor, are to be taken in as all Sense. Others, which are only to be informed or the Dispute of a Person, the Variations which happen in it, and the Opinion of Doctors upon it, by a strange and absurd Construction are applied to explain very different Purposes: And as if they were intended even to their own Subjection, and to the dishonour of their Explanations, they call in for all several disjointed Fragments, Extractions and Scraps of Papers, which no Man but themselves can all what to make of; and when there happen to be some Words which cannot be reconciled with such a Construction, or the Uses which they would make of them, they are totally omitted, and we are told they are not material, or not yet discovered, or not legible in the original, but your Lordships and the World must intend them to mean something criminal.

My Lords, if such foreign Suppositions, Guesses, and Inferences, such insinuated Conclusions, false Intimates, and Innuendoes, are to be admitted as Evidence, and serve the Name of Proof, I must confess, they have given you leave. If the Witnesses, as Conjurators of Deceptions, the Histories and Reports of third, fourth, and fifth Parties, are to take Place as your judicial Proceedings, instead of first plain, honest, and positive Proof which the Law requires, or if the Number or Falsity and the Variety of Circumstances could make them alter or exceed their Nature, I must confess they have offered some things worthy of your Lordships Consideration.

But as it were your Lordships Pleasure to continue Things according to the most modest, plain, and just Import of the Words, as others would have understood, and to such a Suit as we have, we should probably want some, or in that just Manner which your Lordships have been so good on criminal Prosecutions, no one can say they have been one Degree of legal or reasonable Evidence, to prove any such Suggestions in the Bill. This I must humbly say, my Lords, I think, so one can dispense my Affiance.

Thus far, in general, of the Points that have been offered; but I shall, under your Lordships Favour, speak now more particularly to them, and shall be so far from abating or softening over any thing that has been said, that I am willing every Thing those learned Gentlemen for the Bill have been pleased to offer, or that Honourable Committee have observed in their Report, should have its full Weight, and be put in the strongest Light against us.

It has been observed, that there were three several Methods at Times fixed for the Execution of this intended Conspiracy.

The first was to have procured a regular Body of foreign Forces to invade the Kingdom at the Time of the late Election, which was from the Middle of March to the Middle of April 1722.

But have they shewn your Lordships any Evidence, or even one Passage in the Report of that Honourable Committee, in a particularly charges his Lordship with being privy to any one of those three Designs thus generally and roundly asserted? He is not charged with being privy to either of the three Methods to the Regent for France. The only Passage that can be pretended to contain any Imputation of that Kind, is in the Letter signed 18th to Justice, which they say, there is Reason to believe was from my Lord Bishop to the Pretender: But this we hope in the Course of our Evidence effectually to disprove.

The second Design was so have made an Attempt at the Time it was believed his Majesty would go abroad, that it was insinuated in relation to his Lordship, is contained in two or three obscure Passages relating to conference in Letters said to have passed between Justice, or his Secretary and Mr. Kelly; which Passages being strangely ambiguous, are interpreted in an ill Meaning, by Hearings from News and Penmen, and Phislar's Cyprian; but cannot, without the greatest Absurdity, be thought to relate to his Lordship.

Two of the Passages (a) relate to Remittances of Money, which they intimate the Bishop was to furnish; but it amounts in the whole to no more than the bare Hearing of one Man, and an arbitrary Imputation of some Expressions in the Letter of two others, (so either of which his







for, as one surely can say it would be admitted as Evidence; but since he is dead, and we have no Opportunity of cross-examining of him, why should his Lordship be have the Advantage of it, as was refused in the Case of the 10 King against *Pate*? Or like the known Case of a Man dying in 3 Sessions, the Law is changed, and his Counsel is withdrawn? And it cannot be denied, but if one or two Witnesses should deny, and a Person had taken Measures of what he could say, we should doubt, and our Benefit of his Testimony, and while there is no such Reason, there ought in Justice to be a same Law and Construction. And yet this is the Foundation and Support of the whole Charge against his Lordship. It is upon this Man's Examination singly that he is accused, among other notorious Untruths, that the Pretender had met upon Advice from the Bishop, than from any other Person, and that, and whatever else it is, that, with Submission to your Lordship, seems to be no more than this, that *Nyase* was heard to say, what is said *h. h.*, what *Kely* must have heard from other Persons say, and they had heard the Pretender say, what neither they, nor any one else, ever had Reason to say.

But, my Lords, there is still something more strange in what is now attempted, for the Persons of whom he pretended they heard all this, and into whose Testimony it must all be relied, are now both dead, and so as to free supposing what he pretended they have heard just then, that they should not deny it, and that *W. Jones* is a man of firm has already done it (if my Instructions are true) in the most plain Manner at your Lordship's Bar, and the other is now ready to do so again, and *Nyase* was to confess to himself of the Falsity of what he said, that he left his Life to avoid the Punishment that might otherwise have fallen on him, (for his Flight, my Lords, can admit of no other Sense or Construction). He could not apprehend himself in Danger, if what he had said was true; but, on the contrary, had Reason to expect Rewards, if he could make out the Truth of his Informations. Such forbids us now, my Lords, to say any more of him, unless it be thought proper to prove the Falsity of his Informations by his own free confession; or else, after repeated and confirmed to Strangers and different Persons. And if (my Instructions are true) we have that he will stick still fully to it.

This is the first and the principal Part of their Proof; and if we take this to be a dead man, all the mighty and ridiculous stuff upon it must be to the Ground, and all their corroborated Proofs and concurrent Circumstances in all come to nothing.

The second Head of Accusation against his Lordship, is, from the Letters, supposed to be dictated by him, of the 20th of April. The first of these Letters, interpreted *English*, signed in the Name of *Jones*, is directed to *Argente*, or, interpreted *Latin*, *h. h. h. h.* a third is signed, explained to mean the Pretender, signed 1738, and sometimes 'no printed 1737, and therefore which of these two I might I cannot tell.

Before I speak of the Letters themselves, I shall mention one Word as to the Manner of their Conveyance: They are said to be enclosed in a Packet to some Garden of *Bowley*, in a Letter from *Kely* himself, sent by ordinary Post, and signed with a Name, which they say he must usually signed and went by. This is so improbable, that out of eight or ten Names they are pleased to give him, he could bestink himself at that Time to no other Name to sign a Letter, enclosing three of the utmost Consequence; and is so inconsistent with that Caution and Safety all they intimated in this Correspondence, that it almost needs no Constitution. But yet (if my Instructions are true) *Mr. Gordon*, to whom they were to have been directed, and the only indifferent Person in the Case, and can be under no sort of Influence from home, has attested upon his Oath, that there was no such Letter, or Packet, ever came to his Hands.

And supposing these Letters were sent, as they suppose, to the Persons they suppose, and dictated by the Persons they suppose, is there one Passage in none of such a criminal Import, as would be sufficient to found an Indictment at Law? If there is not, they are not to be made criminal by Arguments, Impositions, and Implications. The Case of *Sir Robert Blackmore*, already mentioned by Sir *Grey*, is exactly in Point; and the Reason given for the Reversal of that Judgment (as appears by our own Journals) is, because the Information was grounded upon Letters, which in themselves were not criminal, but made so by Impositions and forced Constructions. There is *Grey's* Case in the same Point, because the Court of King's Bench, in the Year 1705, who was indicted of Treason, and the Over-Acts laid in the Indictment, were for inviting a French King to invade the Kingdom, and by sending Letters and Impositions, how and where to make the Defect. But the Court thought his Hand-writing was gross, and the Manner of the Papers of a very odd and suspicious Nature, and the French King is generally mentioned in them, and the Indictment supposed them to be contrived for to make him over; yet they held it not so Reason.

And the chief Thing that gives any Ground of Suspicion, in this Case, is the Person to whom they are supposed to be directed: But I shall submit to your Lordships, that there has been no Proof that either *Argente* or *Argente*, or *Tudor*, are the very Persons supposed, or that his Lordship was privy to the Writing of one, or the other of them, or that they were capable of Proof, as we hope immediately to make appear.

As to the Pretence, for the present, supposing, as they have supposed, that *Chilwell* and *Argente* mean *Duke* and *Argente*, and that such Letters were sent to them by his Lordship without any Disguise, (unless the Master of the House, as I before said, were plainly criminal) (unless your Lordships will suppose (as they suppose) something criminal contained in the Words of the decyphered Letters, which it could have been proved that the Persons writing or dictating these Letters, knew them to be the Pretender's Address, and as such addressed to them: I don't know (my Lords) how it could be construed a treasonable or criminal Correspondence, either without the Letter or Intention of such. 14 H. III. c. 3. or any other Law whatsoever.

For the late Lord *Alford* is an attainted Person, it can't be denied

but he is still in many Statutes a Subject of England, and is no more directed of his natural Allegiance, than a banished, or an out-laid Man. And that he appeared in open Arms and Rebellion against his Majesty, he was not thought to be directed a Man, as to have a Correspondence with him made Treason or Felony; but that was a peculiar Favour, reserved for the Reverend Priests and his Friends. My Lords, I would not be understood to mean, as if the most innocent Correspondence with a Person under such Circumstances, was prudent or convenient; but I think I may affirm (even from the Clause of this Bill) it would not of itself have been criminal. But (according to my Instructions) this Reverend Priest was little known to that Lord, and never had any Friendship or Acquaintance with him, while in England, and cannot be supposed to have contrived such a Friendship since he was abroad.

That *Duke* was an Agent of the Pretender's, nothing appears antecedent to these Letters. Nor did *Marshall* that Time appear to be one of his Agents, when it was to well known (as that Honourable Committee observe) that he was at that Time supplied by a Person from the Court of England. This Person, indeed, is said to be *John* *h. h. h. h.*, but the Letter to him of the 20th of April (by whomsoever wrote) was five Months before.

Indeed, if *Tudor* had been proved to mean the Pretender, the Writing to him would be High-Treason plainly within the 5. Statute. But that the Pretender is not, and cannot be understood to, this Name, we hope to make appear fully, before we have done, even upon the Points that Honourable Committee have afforded us.

I shall next consider the Nature of the Proofs to induce your Lordships' Belief, that these Letters were dictated by my Lord Bishop: And the first they offer, is, Because the Master of them agrees, with his Lordship's Circumstances at that Time, i. e. his being ill of the Gout, and the approaching Death of his Lady; which (they say) is morally impossible should fast so exactly to any one Man else. The two Circumstances must be proved to be agreeable to those which his Lordship was then under. But one would think (my Lords) they are Circumstances so exclusively to themselves, that they might have been used, especially considering the little Use or Advantage that can really be made of them. But these Circumstances were no Secrets: Every one that knew his Lordship, must likewise know them; and whoever wrote these Letters with a Design to have them intercepted, and impugned to him, (as we hope to show the Case really was) would certainly mention such Matters or Circumstances so truly, as would be naturally thought to describe him. Or, if they were written with his Knowledge, (as they will be clearly proved to have been) it is no wonder, if the Writer, who persecuted his Lordship, should insist all that was proper to falsify the Allegation he intended on him.

Another Proof that they were dictated by his Lordship, they say, is, from the Subscription at the Name of *Jones*, *Argente*, and the 1738, which are all affirmed to denote his Lordship: And the Reason why that Number belongs to him, is, because the Decypherer has found that Number to denote the proper Name, or Title of a Person begins with the Letter R. If this is his real Opinion, what that needs be the Bishop? Is there No-body else, whose Name at Title begins with the same Letter?

But, with Submission to your Lordships, it seems impossible to affirm even thus much with any Degree of Certainty, and it must be only Matter of mere Conjecture. Dr. *Wells*, who is allowed to be the Father of the Science, (such as it is) and was the Wonder and Envy of all Foreigners, directly owns, that the Whole was built upon Conjectures, and he that had the best Guess, was the best *Argente*. Such, my Lords, is the Science of Decyphering. And from such uncertain and conjectural Premises, what certain Conclusion can possibly be drawn? And 'tis plain, Mr. *Wells* is not so infallible as he pretends to be, by that Number of Passages not yet decyphered.

When we took our Objection first against the Nature of this new Sort of Evidence, the Council for the Bill were pleased to cite a Statute in Q. Edw. Time, wherein they said the Word *Cypher* is mentioned. I have since looked for that Statute, but could find nothing about it; and, perhaps, may be mistaken in the Sense which they mean. But, my Lords, I assure they did not mention any particular Trial, where it was ever heard of, or allowed as Evidence. I rather believe that, according to the Notions of that Time, (for soon after the Statute was made against *Wicks*) if any Decypherer had appeared then as Evidence, they might have been in more Danger than the Criminal.

But if there are any Art or Rule, or any reasonable Methods in Decyphering, I am sure 'tis highly improbable, that Persons so cunning and wary, as these are all along represented to be, should be guilty of such a fatal Oversight, as just to sign with such Numbers, that all, it seems, who understand Cyphers, must necessarily know to be intended for the Initial Letters of their Names. It would, my Lords, in my humble Opinion have been more consistent with that Care and Caution, to have made those Numbers hard for quite contrary Letters, and these Letters to have been supplied by some contrary Numbers; and there is no Doubt, but they might have made any others signify the same Things. However, since the Decypherer has not shew'd us by what Methods he has arrived at this Conclusion, 'tis impossible for us, by any positive or direct Evidence, to confute it: But 'tis sufficient for us, to deny on the one hand, what he has on the other hand affirm'd, without telling us the Reasons of it.

That the Names of *Jones* and *Argente* belong to his Lordship, is endeavoured to be proved by some Passages in subsequent Letters, and is depending on the Master of them, which they think is applicable to his Lordship only.

I have already mentioned two of these Passages, viz. his Lordship's own Indisposition, and the Death of his Lady, which are likewise mentioned in the subsequent Letters, in order to falsify the Impertinence intended or deplored on him. There is a Third, which relates to the Preface of a Dog.

That



That such a Dog was first does indeed appear; but that his Lordship had received it, or saw it, or had any Letter or Message about it, has not been proved, and he positively denies it; and to whom, or from whom it was really sent, Mr. A. can best determine, and his Lordship trusts to himself to what he has always affirmed in his Examination; and (if I am rightly inform'd) since he affirm'd to your Lordships Bar, that he gave it to Mrs. Barrow, and designed it for her from the first, and for her only.

My Lords, I should apologise for taking Notice of such minute and low Clerical Offices, but it is the Evidence and Nature of the Proof made use of against us. I should rather have expected, that ingenious Gentleman (the Deceptor) would have shown, by some Rules of his Art, that the whole Story of the Dog had been a Fable or Fiction, and explain'd it to something that was reasonable and probable, which I am sure this is not, to suppose (as the Letters read to your Lordships do suppose) *Misfortune*, i. e. *Misery*, in one Part of the World, General Disasters in another (as) widely distant one from the other, and a *curst* Priory, to be in such Tribulation and Concern for a little Dog, which so was found the Character of any one of the Persons to whom it is applied, would left the Circumstances of this Injured Person, who had at that time a much nearer Concern upon him, from the Death of his Wife, and was himself in such great Distress and Weakness of Body. The speaking therefore of this Priory, backwards and forwards, with such particular Circumstances, and the Report of it so industriously spread many Months before my Lord Bishop's Arrestation, (as some of your Lordships cannot but remember) is absurd and ridiculous upon all other Suppositions, but upon the Design of following something on his Lordship, the Point all along in their View.

If the Writer of these Letters had been really and truly inform'd of his Lordship's Circumstances, he might, perhaps more properly, have affirm'd it of his Lady; which 'tis plain the Writer was not, because he speaks of her as living in Days after she was dead. And how ignorant of them the Writer really was, appears by another Passage in that very Letter; where he says, (b) "Mr. Jones is come to Town for a Day only," *My Lords*. Whereas his Lordship had been in Town Two Days, and still I see more, as appears even by their own Evidence, London and Fleet.

By these your Lordships may see, how many forced Inferences and Conclusions, and what a Train of Absurdities and Suppositions are necessary to support one poor, and (if true) yet incredible Assertion, when once we depart from the true and known Rules of Law!

A Third Way of proving these Letters to be the Bishop's, is from the Hand-writing, which is supposed to be *Kely's*, and he is supposed to have been his Lordship's Secretary in these Matters: Both which Suppositions are defective of any proper or satisfactory Proof.

The first is attempted to be supported by the Testimony of the Clerks of the Post-Office. But before I speak to the Testimony which they have given, I must beg leave to offer one Word as to their manner of examining it; and shall endeavour not to transgress your Lordships late Resolution: And when I mention any Words of that Act of Parliament, it is only to show the cautious Measures the Legislature took even in imparting this Power to them, and the just Apprehensions they had of the Abuse and ill Consequences that might attend it. My Lords, I am far from endeavouring to bring them in danger of a Penalty, as the Council were wont to do; that I am willing to suppose those Clerks had proper Warnings at that Time, and for that particular Opening and Detaining. But that in all which the Act says, and the Words of it are fully justified by such a Confirmation, without going further, and extending the Words of the Act to that which was not in the last within the Intention or Purview of it. It doesn't appear to me, My Lords, I confess, how they are empower'd to take Copies (for all such Acts which are in Restraint of Trade and Commerce, are to be strictly and literally construed): But I am entirely at a Loss to know, from what Words of the Act it can be infer'd, that such Copies shall be received as Evidence in Courts of Judicature; and not only against the Writer himself, but against other Persons too.

A private Act of Parliament (as printed in *Regel* and other authentic Collections of Statutes) has been disallow'd, when it has not been examined with the Record. But, My Lords, I don't know that a Copy of any Thing was ever allow'd as Evidence, but what was made by a proper sworn Officer, known in Law, and where every one may have Access to it; and therefore, if false, may be disproved by the other Side. But is there the same Reason here? My Lords, can the Party c or have an Opportunity to disprove it, if fully copy'd, when the Original is first forward? Or, if it were fill in their Possession, have we any Power to procure a Sight of the Original, or to have a Copy of that Copy? And therefore, we hope your Lordships will not regard that Part of the Evidence, if it were material. But to consider also, My Lords, what it is they have deposited of these Copies. That the Originals were written in the same Hand with some Papers saved them; and which, they were told, were Mr. *Kely's* Hand-writing. Your Lordships, I doubt not, observe the Time when they deposited this first, viz. the 24th of August, and afterwards the first of January till, i. e. the first of their Depositions four Months, the other eight Months, after they had seen the Originals of the 24th of April: For, they were forwarded by the Post, and the Clerks only took Copies of them, and did not detain any one Original for a Specimen till their first Deposition; and fairly that was a little of the hard: So that it rests simply upon the Memory of the Clerks for four or eight Months. I think St. Jones says, *That a Man may even hold his own Fair in a Glass, but he is never fair, but he is forever wrong* *forget what manner of Man he was*: And it is in much more impossible for any one to exactly and nicely to remember all the little Strokes and Dashes of the Pen, by which the Sameness or Diversity of Hand can only be made out.

And all *Misfortune* says, That he believes it to be *Kely's* Hand-writing; and 'tis remarkable, that his Deposition is but in January last, and he left Mrs. Barrow's service in May, so that he could not have seen him

writ since that Time. He don't say he ever read any of his Writings, or at most the Superscription of a Letter: He might, perhaps, for he was at some Distance, as he came in and out of the Room; but for that that cannot be sufficient to form a Judgment of a Man's Hand-writing, and I am sure the Improbability is much greater after nine Months Time. And *Handbook* the Messenger, from seeing the Superscription of a Letter on the Secretary of State, has likewise, I think, taken upon him to swear the same thing.

But supposing these Persons had seen Mr. *Kely* write frequently, and had, without a more material Distance, sworn it to be like his Hand, and any one say, that it is a sufficient, or even a satisfactory Proof, as they say, that it is *Kely's* Hand-writing, yet a Letter never let out of his Hand was positively denied to be his; and 'tis a Witness from he believed it to be hers. I must own, My Lords, this Case, at the last Trial of Mr. *Ligon*, was not only denied to be *Ligon*, but all Men deny'd to make common sense of it: But, with the utmost Diligence to that learned Gentleman that said so, I beg leave to mention the Words of Sir *J. Hando* upon that Case, who was of a different Opinion: "At that I say," says he, when the Case of Lady *Ker* was adjourn'd, besides *Taylor* and *Kely*, two very eminent Judges, there sit in that Court Sir *W. Black*, *Fincham*, whose all will own we have been his own Seal, as he was going to *France* in the Heat of War, contrary to an Act of Parliament, which at that Time made it Treason, and if it is not evidence in Middlemore, much less, says he, in *Treason*. Which Instance, besides the Reason of the Thing itself, is supported by the Authority of Lord *Coke*.

In my Lord Bishop's Case, his Hand-writing was proved by three Witnesses, that had profess'd to him while at the Secretary's Office, and must necessarily have seen him write a thousand Times: But that was not all for their Papers were seized on him, sealed with his own Seal, as he was going to *France* in the Heat of War, contrary to an Act of Parliament, which at that Time made it Treason.

In the Trial of the Seven Bishops, the same Question arose, Whether Similitude of Hands was a Proof in a Criminal Matter? and it was not admitted.

In *Francis's* Trial, before all the Judges at the Old-Baily, it is positively laid down by the Chief Baron, and not contradicted by any other, That it was no Proof or Evidence of itself, and the Letter in that Case would not have been admitted, but that it was it and by his Evidence, and a Copy of the very same Letter enter'd in his Pocket-Book, which he had owned and explained to some Lords of the Council.

In *Grady's* Case, the Hand-writing was sworn to by three positive Witnesses, and owned in one of the Papers by the Prisoner himself; yet Lord Chief Justice *Holt* and the Court held it no Evidence, because *Mr. Hando* says he, *my brother*, and *Presumption shall never take Place in Treason*.

In the last Case of Mr. *Ligon*, 'tis well known, that besides the First of his own Hand-writing, the Treasonable Papers were delivered by his own Hand to the Witness; and 'twas upon that Ground only, they were permitted to be read against him. Besides this, he had said first before the Lords of the Council, which the Court thought amounted to a full Acknowledgment that it was his Writing. But even all this, My Lords, was made use of against him but as concurrent Evidence, because they were two positive Witnesses, one says, against him, as to the other Overt-Act.

I will mention to your Lordships five foreign, concurrent Authorities upon this Point, to show, that the Reason and Equity of this Doctrine has been uniform and universal, That Similitude or Comparison of Hands is not a sufficient Proof of it. There is a *Gloss* Cafe of *Yves* *Almon* in a Book called, *La Journal du Palais*. He had lived 40 Years from 1515, and then returned and re-learned here, after he was married to another. One of his Methods made use of to prove him to be the first Person, was, the Hand-writing of Letters that had formerly passed between them: Which occasion'd this Question before all the famous Judges of *France*, "Whether the Testimony of distant Nations, who fully depose of the Similitude of the Hands, was a sufficient Proof of this Case?" and it was universally denied. And yet that, My Lords, was a Case highly favour'd in all Laws; but more highly in those Places where Marriage is reputed as a Sacrament, and in favour of which we will often admit even the Party's own Oath.

*Coke* *Feltonius*, Lib. 4. Tit. 12. Dyl. 31. says, "A Proof by Comparison of Hands, is a very dangerous Proof: *Quia in casu civis non debet esse ad convocationem, et contra procedat magis superius, et capere, et asserere, non tunc*." *Per*, an excellent Modern Civilian, Lib. 2. Tom. 4. *lib. 11*, to the very same Purpose. And so does *Caulet* in his Commentary on the Novels 73. "The *Ramus*, says he, never allow'd it, but when no other Proof could be had. And in later Times, when Forgery became more frequent, they would not allow of it at all, and 'twas the Writing had been acknowledged by the Party, or proved by witnesses who saw him write it."

And then it was necessary to bring both into Court, that the Judges themselves might make the Comparison, and not leave the Witness to be the only Judge of it.

But it was never known, and I may defy all the Writers of Law to show me one Instance, that any Evidence of the Similitude of Hands (which can only be made out by Comparison) was admitted, but where the Papers pretended to be written in the same Hand, were produced and compared: Which is so far from being the perfect Case, that even the attesting Clerks, who are the only Witnesses in the Case, never had an Opportunity of comparing the Original Letter *Bope's* in *August* last, with any one of the three original Letters dated *April 20*, or with



of the intermediate Letters, which they affirm to have been written in the late Hand.

And if it be considered, how much more difficult it is to distinguish the Hand of one writing in Figures (which hand single one out another), than the Hand of one writing in Words at length (which are variously ordered and combined), your Lordships will never give them the least Degree of Credit.

But as to our Part to End to this Evidence (if my Instructions are true), I have already appeared to your Lordships, upon Mr. Kelly's Bill, that the only Original Letter of the transmission of *Agrippa*, there is a Sample at the Foot-office, and the only Ground of affirming that I have to have been his, was not his Hand-writing; and, if need be, we have the same in our right Evidence to produce. Upon the whole, therefore, I think I am right in affirming, That there is no legal or reasonable Ground to infer those Letters to have been wrote by Kelly.

And lastly, my Lords, it was incumbent on them to prove, as well as to affirm, that they were wrote by his Lordship's Direction, before they could affect him, even tho' the Writer (whenever he was) had presumed to have signed them as his Lordship's own Name and proper Appellation. I believe your Lordships, how does it in the last appeal, that Mr. Kelly, or Mr. Garte (as it afterwards upon the better Grounds suggested) was employed by his Lordship to carry on that Correspondence? If it is, I cannot but be frequently led at your Lordship's Bar, as well as by that Honorable Committee, but like other Charges, without any shadow of Proof, which is an obscure Passage in a Letter of *Chivalry* from abroad, as one Witness here, Dr. 37, which says, They had a Story in France of *Wolton's* *Liberty* being laid up for Debt: Which, as I shall afterwards show, could not possibly mean his Lordship. There is another Passage also in the Letter to *Debiol*, from whence the false Inference is made. What unknown Person that *Dubin* is, does not appear, or whether it is a real or fictitious Name; for all three Lords and Cyphers afford nothing like it. The Committee are pleased to suppose it a Letter to the Bishop, and received by him from abroad, and from thence infer, he was to receive Letters directed to him by fictitious Names. The Council for the bill suppose it a Letter from himself to himself, because the Hand-writing, they say, or rather the Letter is it something like his Lordship's. It is not used by any one, and dated only the twentieth of *December* without any Year; and tho' that Honorable Committee are pleased to affirm, as these various reasons on it, 1722, because *July* for, they say, was about that Time *Agrippa*, yet for what appears from a Letter itself, it might be written before Mr. Kelly's Arrival, or before the several Acts of Grace that are here; and if it had any Criminal Meaning, 'tis impossible his Lordship would have mentioned the Hand of Conscience at length, and much less improbable, that he should have destroyed all his other Letters (as the Committee are pleased to imagine), and to preserve this only, which is the Thing most wanted. Another Proof that it is no Letter, is that a broken Seal, which, they say, is made by the same Seal as that on his Servant at the Tower. But consider, my Lords, how many mistakes were at last come to in this one Attempt. Similitude of Hand, Similitude of Cyphers, Similitude of Cyphers, and Similitude of Hand. This Similitude of Hand-writing is no Proof I have shown by a Variety of the best Authorities: much less, the Similitude of one Letter in its Alphabet; that is, I dare say, a Concept perfectly new. And 'tis well known, Artificers are capable of counterfeiting any Man's Hand or Seal in such a Manner, that even the Person whose Hand or Seal it is, shall not be able to distinguish it from his own: And your Lordships Yesterday in single Specimen of it.

In upon these Grounds, my Lords, that Kelly hath been affirmed to have been his Lordship's Secretary in these Matters, but that he is not the least Cause of the Pretence of his having writ any other Letters of any kind for the Bishop but this: These only, and not in or throughout the whole Correspondence charged to have been written by Kelly, or Garte to the Bishop: they are addressed so, without the Bishop's Privy or Direction; they are not uncommon to a third to pretend Acquaintance with Persons of Distinction, or to make use of their Name and Authority, to give themselves a greater Degree of Credit with their Correspondents.

It may be said, and ought soon to be presumed to, since no Man has proved it otherwise, then no Man surely ought to suffer by the Act of Statute, or to be punished for another Man's Fault.

I believe no one will think it any Reflection to bear many of your Lordships Names on these Cyphers, and afterwards to find a frequent Mention of them in the Correspondence; or to find his Majesty's own Name in *Bernard's* Cypher, under the Disguise of *Honourable*, and Page 63 of the *Act*, Confinement from the Pretender and his Wife to one *Honourable* Man, I dare say, will apply these, or many other Names of Persons of Honour mentioned in them, to the Persons themselves, or imagine these Letters were really wrote by their Privy or Consent. By the same Rule of Justice, and by a Parity of Reason, any Lord Bishop's Name may be presumed to have been made use of without his Privy or Consent; and there is any certain Rule or reason in Law, it is that, That all Presumptions ought to be in favour of Innocency.

And to show the little Improbability there was between his Lordship and Mr. Kelly, (if *Agrippa* means his Lordship, as they suppose, or that Letter E. was from Kelly, as they also suppose) it will be sufficient to remind your Lordships of one Part of it, where the Writer says, — "That *Agrippa* and one *Yon* had been together; (at the Result of this Meeting he had some working of. *Agrippa* had had his Suspicion four or five, tho' I can-

not find out the Place; but you will hear it from *Yon*, to whom, it's probable, he may have communicated his Sentiments that way." Thus is, my Lords, if I understand the Meaning of these Words, that Kelly the supposed Secretary on all their Occasions, knew nothing of the Matter, or at least much less than *Yon*, when Kelly had but just before introduced into *Agrippa's* Acquaintance.

There is another Letter which has been mentioned, E. 4<sup>th</sup> if it is to be understood to be Mr. Kelly's, as they suppose, and *Agrippa* is to mean his Lordship; the we are far from admitting the one or the other of them; we define to make use of, and contents to a full and direct Confession that the Writer (whenever he is) had nothing in his Power or Knowledge to share him with. I have the more Confidence, my Lords, to repeat the Words of this Letter, because that Honorable Committee have it in their own Exception, *But* copy of the *Re. et*: Whereas the Writer says, "I have never heard of the Case Names of *Yon* and *Agrippa*, or who were secreted by them: That from time to time Power is wanted to do for him, but I should not be so much as to let for his Misfortune, that it is not to be done; I am content to reveal, face such Usage might provide a possible Mistake. And all the while is far more clear, if he had not, since no Person would be so imprudent as to be understood as from that Gentleman, who I think was so content to have the Benefit of his own and *Agrippa's* Declaration.

But however, my Lords, if we should not be allowed to make this Use of it, yet if *Agrippa* is real, as it is true, Mr. Kelly fully affirms to have been at your Lordship's Bar, and even without it, we shall be able to make appear most plainly, in the course of our Evidence, that Kelly did not, and could not write that Letter: Let us then look at his Lordship's Manuscript, or by his Lordship's Direction.

It is then of all this in 1720 April, when this Reverend Prelate (as he has been already mentioned in your Lordships) was present at the trial of *Yon* and *Agrippa*, had he a great while he is confined to his Room, and the great *Wolton* and *Debiol*, when his Lady lay in the next Room, and he is confined.

There is also, as I other remarkable Circumstances in his Family which are sufficient to mark a particular Period of Time, as to the one hand, the *Wolton* and *Debiol* of their fictitious Letters from Advantage to make use of the Bishop's Name; on the other hand, they affirm his Lordship's late Advantage (in the most providential Manner, I may say) was then clearing himself from the Imputation of them. Because his Servants, then attending him, are able to recollect what passed on that Occasion, and to be very positive and particular in their Evidence concerning it.

His Lordship himself then in three Men-Servants actually attending on him, and some one of them, both Day and Night, either present with him, or by being or waiting in his Passage at his Chamber-Door, or in either being warm, and the Room closed, the Door was generally wide open. It was then this Reverend Prelate's Misfortune, that he was not able, without their Help, to rise, or even to lift up what he sat or dined in his Mouth. Besides this, there were Two Women-Servants, which constantly attended his Lady in her Room, which was adjoining, and came frequently to him (once or twice at least) every Day with Accusers how he did, the Bishop himself being distressed (for several Days before her Death) to get out of his Room.

And all these five Servants would depose, That for 14 or 15 Days before his Lady's Death, no stranger whatever visited his Lordship, much less stayed there any Time with him. This (my Lords) the Women-Servants will affirm, as far as their frequent forcing of him gave them Opportunity to make these Observations. His Coachman (who now watches against him) has constantly affirmed the same thing, both before, as well as to your Lordships. But the same Man (one of which was always in the Room, Day and Night, as I before observed) can be most full and perspicuous in his Testimony, so that the Bishop could not possibly dictate these Letters, either to Mr. Kelly, or to any Body else, without the Privy and Observation of some of them.

This being a Negative, it is impossible to be more fully proved in any Case; and nothing but the remarkable Circumstances which happened at that time, to which the Writer of these Letters un luckily pinned them down, could have helped us to so strong and undeniable a Proof of it.

Whether Mr. Kelly was ever acquainted or visited his Lordship, indeed I am not satisfied, their Evidence, (as I am sure, has proved nothing like it, nor is it material much less to the Cause) But as to the particular time (12 April), when Mr. Kelly is supposed to have told Mrs. *Barnes*, and the n<sup>o</sup> supposed to have told Mrs. *Levent*, that his Lordship sent his Coach for Kelly, we shall expressly prove the contrary; and besides that it is only Heavily of Mrs. *Levent* from Mrs. *Barnes* who denies it, and his Lordship's Disability at that time to receive Company; I say (my Lords) beside these Circumstances, it is remarkable that the Coachman and the Baker (who it seems were directed to keep a Diary of every Body that came, and of all that happened in his Lordship's Family) say not one Word of this remarkable Incident, in either of their Depositions. The Coachman has denied that he ever fetched Mr. Kelly in his Lordship's Coach since he lived with his Lordship, or ever was at Kelly's Lodgings, or that he ever saw him or Mr. Kelly in his Life-time; and surely his Silence (if there were nothing else in the Case) is sufficient to infer, that he was not there at that time: And all Mrs. *Key* and *Mallet* swear is no more, than that they don't remember Kelly lay at Mrs. *Barnes's* that *Thursday* or *Friday* (the full only speaks in her pointed Deposition of a *Thursday* or *Friday* about the middle of April). And how is it possible they should remember the Time for exactly, for neither of them belonged immediately to Kelly, but were only Servants to Mrs. *Barnes*, who had her own Lodgings at her House? They did not even make their Affidavits till the 6th of February last; and 'tis no easy Matter to remember such an inconsiderable Circumstance of a Lodger (ten Months











*Day, circumstantial Evidence is sufficient in a Charge of High-Treason, as the Case now before you in this (my Lords) we have heard fully and often repeated, as it were, to anticipate us in this Objective, which they themselves know to be fully founded.*

I have to far acted in compliance to them, as to argue chiefly on the Facts and Circumstances themselves, and under the very same Lights they have presented them to us, and hope (my Lords) our Inferences from them have been more full, our Consideration more natural, and our Probabilities much more or than theirs; and even as that View (considered liberally from what the Common Law and the Common Justice of the Reason requires), I hope we have fully done to your Lordships Satisfaction, and to the Conviction of every reasonable or impartial Person, that there are no Grounds for what is suggested in the Bill, and that all who hear me may justly wonder, how this Reverend Prelate comes to be charged (as he is in the Preamble of the Bill) with being deeply concerned in forming, directing, and carrying on a Conspiracy: when it has not been proved, that he entered into any one Consultation concerning any one Measure, gave any one Direction, that he has done any one criminal Act, written, dictated, or received any one criminal Letter; and if I should were insinuating on an Evidence strictly legal, or a Proof according to the known Rules of Law; give me Leave to say, my Lords, because it is true, there has not been a reasonable Evidence.

But yet, my Lords, I shall always insist, both as an Englishman and as Counsel to this Reverend Prelate, that there ought to be a legal Evidence in these, as well as in any other criminal Proceedings. If there is any Difference, it is in this only, that as there are certainly many greater Inconveniences to the Subject in this Method of Proceeding, there ought to be a stronger Proof, and a Conviction more strictly legal. I will always hope, your Lordships will expect a Proof in such heavy Charges, agreeable to the Laws of the Land, and the Rules and Regulations of other Judicatures. I am far from thinking your Lordships are circumscribed by the Forms of inferior Courts, because they are in their own Nature discretionary, and the Courts themselves often vary and depart from them. But the fundamental Maxims of Law, the unalterable Measures of Justice, and the positive Directions of an Act of Parliament, are of another Nature; they are binding every where, to all Persons and Authorities, (as long as they continue Laws) the King himself not excepted. I should beg Pardon, for carrying my Attention too far, but that I am taught by the Bill of Rights that the King himself is bound by the Law; that it is not in his Power to alter, suspend, or dispense with Laws. But if the Doctrine of the Counsel for the King is true, and every one at Liberty to follow the Dictates of his own Judgment, and what Rules he pleases, what Confusions, Uncertainties, and Arbitrariness must it introduce in all Proceedings? Private Opinion will too often be a Pretence to exercise private Malice, Revenge, or Ambition.

I might appeal to every one that hears me, whether he has not at some Time or other believed some Things as strongly, as he did at first this Reverend Prelate to be guilty of what was suggested against him, and has afterwards found himself mistaken? What is more common than for Men that agree in the same Notions of Morality, to debate different Conclusions and Applications from them? (even who in Innocent or Partiality do not intervene.) And therefore the Wisdom of the Law of England has been, to determine general Notions of Justice and Right by particular Rules and Applications, in order to settle that Variety and Inconsistency, which without some established Rule, must necessarily follow. Where then shall we go for true and proper Notions of Law or Equity, but to those great Oracles and Fountains, my Lords the Judges? What better Guide or more certain Rule, can any one of your Lordships propose to himself, than the constant and uniform Judgment of those, whose the Constitution of this Kingdom have made the proper Dispensers of Justice, and the Interpreters of Law?

To your Lordships peculiar Advantage, to be continually assisted by some of your Lords the Judges, and we hope in this Instance (if any Doubt can at last remain) your Lordships will hear their Opinion, with the same Defence and Candour as in former Cases. Let it never be said, my Lords, that you, who are the Supreme Oyes of the Kingdom, whose Judgments and Regulations are Laws to other Courts, and ought to be an example to all others in the Justice and Equity of your Proceedings, that your Lordships will not regard the solemn Judgment of the Judges, or the Offices of former Parliaments; and let it not be said, that because other Courts are bound by a Law to require such and such Circumstances to infer an Offence, or such a Proof before they condemn a Man, that you (my Lords) will follow your own private Opinion, make what you please to be an Offence, without any Evidence at all, but upon mere Hearsay, Conjectures, and Suppositions. Men can read that melancholy Case without Concern, which my Lord Cole has in his 3d *Testis* of an Uncle that was condemned and executed for the supposed Death of his Niece, merely upon a Train of Presumptions and circumstantial Evidence; or *Herridge's* Case within Memory, where the Father and Mother both suffered upon Presumptions for a supposed Murder! And with what Shame and Remorse did that happy Judge in himself convicted by the Persons returning from beyond Sea! And every one should remember the Change of Treason against this Reverend Prelate's Predecessor. If such a Bill had been thought on, or much stronger Evidence had been received, it might have paid before the Truth could have appeared: But happy was it for that innocent Prelate, that a quite contrary Method was taken, and his Accusers brought Face to Face to him, by which he quickly discovered the Villany of his Misaccusers. Private Opinion or Persuasion, therefore, is such a Poison, that every honest Man ought to disclaim in these Cases; and the greater the Crime is, in which he is to judge, the stronger Proof he ought to require; and when not adhered strictly to Justice, and goes according to the Allegate of *Prokator*, by the best Rules and Reasons of Law; whatever Mistakes, Misinformations, or false Evidence may happen in the Case, he can never have Cause to repent, and neither the present Age nor Posterity can blame him.

It was formerly a Question, whether the *Star-Chamber* was bound by the Rules and Regulations of other Courts? And many Excellent, extraordinary Opinions in this Respect was the Reason that anciently was laid aside. And it has been a great a Question, whether the Court of Chancery was to be guided by Rules and Precedents? But the Opinion has always been, that a Judge in Equity ought to regard Rules and Regulations that have been in like Cases, unless he is obliged to make Decrees totally arbitrary.

For the Equity and Reason, in itself, is the same all the World over, and nothing can alter the proper and intricate Notions of it; yet as Matters about which it is inconsistent are represented in different Cases, and, like Streams of Water, will receive the little Taint from the Soil thro' which it runs, and there is something in every Man's Temper that will slide into his best formed Notions, it throws the Necessity of some fixed and establish'd Rules, at all Times, and in all Places of Judicature. And therefore, in that high Court of Equity, tho' the Rigor of the Common Law is in force; yet there is something more known, than that it is not to be impenetrable in any of its Effects and fundamental Points.

I beg your Lordships will pardon me, if I mention an Authority of two great Names, that expressly lay, the High Court of Parliament likewise bound by the Rules of Law. Lord Chief Justice *Hobbes*, the Authority of Parliament is from the (a) Law; as it is circumscribed by Law, so it may be exceeded; and if they do exceed their legal Bounds and Authority, their Acts are wrongful, and cannot be justified any more than the Acts of private Men. I might add to this, the Opinion of *Payne*, *Hale*, and *Hobbes*, to the same Purpose; that the Rules of Law ought to guide in passing of Acts of Parliament, as well as in the ordinary Course of Judicature. But when I mention the Sense of a living Authority, that has filled the highest Seatings in the Law, and so great an Assent to your Lordships House, and whose Menus have been so judiciously distinguished by our Houses, I need cite no more. It was in a Case where the same Doctrine was advanced (that the Parliament was not bound to conform to the Rules and Proceedings of other Courts); in answer to which, that noble Lord with great Truth observed, that those Rules were not to be Patterns to them, only because they were Rules of those Courts, but because they were Reason, and Reason approved of by long Experience, and they obtain there as Rules for that Cause; and he said (my Lords) that is a Cause why the House should imitate them, as much as *Myrmidon* shall, as well how can they be said to succeed in Reason or Justice, when they go beside, or transgress those Rules?

Besides these great Authorities, there have been Times, when Parliaments have thought themselves bound by the common Rules and Proceedings of Law, and Parliaments that were very tender and sensible of their own Power, in other Respects. Not to mention several ancient Acts of Review, because Judgments given in Parliament were not pronounced according to the known Laws; thus is the Act for the Attainder of the Earl of Arundel, because he had been instrumental in procuring the Attainder of another Lord, under pretence of a Letter, which (the Record says by way) is no Evidence. And the Record for restoring the Attainder of *Re or Arundel*, 2d E. III. Sir Thomas *Holby*, &c. is expressly declared to be, because they were Attainted contrary to the good Laws and Customs of the Realm. And not only the Lawyers and the Historians of this Time condemn them as grossly contrary to Law and Justice, but the Stat. 1 E. VI. cap. 12. is directly levelled at them. For it seems that these Proceedings were terrible and extreme, introduced for particular Policies and Purposes, repels several Statutes that had been enacted in the preceding Reigns; and thus there might be no more such for the future, reduces all Trials to the ancient Standard of the 2d E. III. and goes on and enacts, That no Person or Persons (as a my Lords, as I humbly apprehend, no manner of Person, in no manner of Place, Court, or Method) shall be convicted of any Offence of Treason, False Treason, Misprision, for which the Offender shall in any wife suffer any Pains of Death, Imprisonment, loss of Goods, or the like, unless accused by the Testimony of two true and sufficient Witnesses. The Stat. 5 E. VI. cap. 12. goes further, and says, There shall not only be two Witnesses, but those two Witnesses shall be produced on Person before the Party, and shall before his Examination and answer what they have to say. The Words of this Statute as well as the former, are as general as they can be, without any Exception of Place or Proceeding.

But notwithstanding these two Statutes, there was full Occasion for the Stat. 3 H. III. to ascertain Treason, and to regulate the Method of Trial. For there had been several tender, complaint Laws introduced by the intended Zeal of Ministers, with a peculiar Eye to the Prince as an Heir to the Throne; which tho' others could not apprehend the Justice or Need of, yet on these Laws there had been many unreasonable Penalties, tender and irregular Prosecutions in the preceding Reigns, and which Sir *John Haver* remarks as one of the great and intricate Causes of the Revolution. And to follow the Reformation of the Nation on their Proceedings they were all reversed by particular Acts of Parliament; and to prevent the same for the future, that glorious Statute was made of the 3 H. III. cap. 3. That Persons accused as Offenders should be justly and equitably tried, and not debar'd of all just and equal Means for the Defence of their Innocency. And whoever calls his Eye over the preceding Trials, will find every Claus of that Statute, as it were, a particular Provision against the Mistakes that had been, and to prevent the like for the Time to come.

I do admit (my Lords) there is a Privilege in the End of that Statute, that it shall not extend to any Impeachments or Proceedings in Parliaments; and therefore I don't mention it as a Rule to Parliamentary Proceedings in all Respects, as it is to inferior Courts: But surely the Reason of Justice of that Act ought to be a Guide, as far as it is consistent with the Nature of your Lordships Proceedings. And inasmuch as it was the Sense of the whole Legislature, and the united Voice of the Nation at that Time, and on a dear-bought Experience, it is fairly to lay worthy of your



with publick Witnesses, to run again into the same Mischief from which we are happily released, or to split on the very same Rocks, on which many of your Lordships noble Ancestors have perished.

And it can never be (with Submission to your Lordship's better Judgment) a natural or a reasonable Construction of this Preamble to enlarge the Proceedings of Parliament, or to give a greater Latitude than they have before. And to send your Lordships into the Upper of Parliament now, to proceed this Statute, I need mention but two or three Instances out of many. Thus *Duke's Case* in King James's Time, 1684, when three noble persons were taken and a strong constitutional Evidence, and yet your Lordships' Proceedings thought that not sufficient to find him guilty. The *Lord Stanfield's Case* in the very same Year, where there was also one Witness, and three Circumstances; and he was in the like manner acquitted. In the *Case of the Earl of Pembroke*, 1677, for Blaspemy and Treason on the parchment, your Lordships' Proceedings declared, That the single Testimony of a Commoner, tho' so oath, was no sufficient Evidence against a Peer denying the Fact upon his Oath; and upon that single Witness his Majesty that he might be released from his Imprisonment.

And, as I humbly apprehend, your Lordships have thought fit to admit the Force of the Regulations of that Act into your Proceedings, such of them as (I know truly) are agreeable and consistent with the Nature of your Proceedings. Your Lordships have been pleas'd to allow Counsel to a Party in Treason to speak to Matters of Fact as well as Law: You have a Copy of the Charge against him; you require the Witness for him to appear Oath, as well as against him; neither will your Lordship admit Evidence of a Fact not in the Charge. And fairly, my Lords, there is much more, as much Equity as much Law, as to those Matters in the last Edition, which the Testimony of two lawful and sufficient Witnesses. Now, my Lords, I hope the Reason is much stronger, because (albeit) your Lordships should consider yourselves as unsworn by the Statute, yet it is positively requir'd by both the Statutes of Ed. VI. and Geo. I. general and without Exception, (as I before observ'd) and from the venerable Use of Parliament (as I have likewise shew'd) that there was even down to the Stat. 7 Will. And if your Lordship is not content with the Statute of King William, and the Statutes of Edward VI. and Geo. I. you may leave, my Lords, to say, it can never be just or lawful to take away any Man's Life or Liberty on less Evidence than what those Statutes require, in any Place, or by any Method who can. Because I am oblig'd to consider, that every just Law is a Rule on Conscience, and that Justice is lost, and no Man can say his Conscience is void of all that is good and Man, unless he acts according to the Laws of the Land, as well as of the other.

And if your Lordships will give me leave to try once more out of the Text on my own Position, I will mention a Word out of the Civil Law, applicable to this: That in a Law, my Lords, in some Degree rec'd is all Nations, as a Scheme of the greatest Equity and Justice. The Nature of Witnesses by that (as Law, ought to be two at least, to make a full proof, and free from all Exceptions, both as to their Persons and as to their Words. The Testimony of a single Witness is of no Validity, unless in some Circumstances consent; and it was not the Manner of the Romans to condemn any Man, before that he, which is accus'd, has his Accusers face to face. And thus, my Lords, in not only the dead Letter of our Law and the Dig. but the learned Glosses in his Notes upon these very Laws, it is the general Policy, and obtains at this Day in most Parts of our Kingdom. I do own that there are many Cases that happen with us in the Court below, where the Testimony of two Witnesses is not required, but, say, my Lords, it is when the Trial is by Jury, that is, when twelve Men, coming from the Party's own Neighbourhood, and consequently well supposed to know something of the Fact upon their own Knowledge and Verdict upon their Oath. But I need not say, that even in a Trial by Jury, it is a Case of High Treason, like this now before your Lordships, there must be two Witnesses, and nothing less can warrant the Verdict. And truly, my Lords, it is a Prejudice founded on Reason, not because this or that Law, or this or that Court requires it, but because it is absolutely necessary for the Discovery of Truth, and for the forming of right Judgment, whether what a witness has said is true or false. One Witness may mistake, or be perjur'd, and yet happen to be consistent with himself, and when there are two separately examined, the Truth is much more easily found out. And this is a Criminal way now and then escape the Force of such a Proof, yet that would be a far less Evil, than to trust in such a Case to Perjury, as Circumstances and Prejudice, and to the Malign and Mischief of our Nation.

But, notwithstanding the Opinion of the greatest Lawyers both English and Foreign, your own uniform Usage and Resolution, and the Reason of the Thing itself, your Lordships are resolv'd, in this one Instance, to follow every one his own private and particular Conscience; let every one hearken that still Voice within him, with an honest Attention, into those sweet Whispers, with Temper and Moderation. Let no Man be sway'd by Hope, over-ruled by Fear, or transported by Anger before the Bench of Justice, and though that Reverend Prelate's Advice be a Word to himself Politely, which may never be used. Consider, my Lords, if not for his, yet for your own Sakes, the Circumstances, the Probabilities, and Evidence on both Sides, with an unbiased Conscience, and by the Measure of Law and Justice. For tho' some Proceedings may seem convenient to certain Times and Occasions, yet unless they agree with the Law, with Reason, and with Justice, no Man ought to think he has any Power to consent.

There is a noble Instance on Record of the Lord Digby, and worthy of every one's Imitation. He had been, my Lords, one of the most violent Managers as such Impugners of the Lord Strafford, and yet when that Proceedings was ended, and a Bill of Attainder brought in, he spoke so warmly against it. Tho' he was full of Opinion (he said) that the Lord was the false dangerous Minister, and great Apologist to the Com-

monwealth, who must not expect to be punished in this World till he was dispatched to another; yet he had said as much, had then put it to that Dispute. He put them in mind of the Difference between Prosecutors and Judges, and how unbecoming that Error was in them, now they were Judges, which perhaps might be commendable in them as Prosecutors. That when he gave his Consent to the Accusation, he was accus'd, his Crimes usual, have been fully and legally proved, which if they had, he could have condemn'd him with Innocency, as he had protect'd him with Conscience in the doing of it. The Parliament, 'tis true, had a Judicial and a Legislative Capacity, the Measure of the one ought to be legally just, the other political and prudential; but these two Capacities were not to be confounded in Judgment; they were not to pure up (says he) the Want of Legality by Matters of Conscience, to the Ruin of a Man, by a Law made ex post facto.

What can I, my Lords, For it must appear to your Lordships by this Time, that this Proceeding is contrary to the fundamental Laws of the Kingdom, contrary to Publick Will, and unjust in itself. That the Nations and Successors upon which it is grounded have not been proved with any Colour of legal Evidence, or with any Degree of reasonable Probability, which ought to satisfy the Conscience of its bench, reasonable Men. But if the Matters, which I have humbly laid before your Lordship, have not all the Weights, which I hope they have, or if I have omitted any thing that is material or necessary for that Reverend Prelate's Defence, Your Lordships, I hope, at Judges, (and consequently in some measure as Counsel, I see Prelate) will, from your own Conscience, supply it. Or if I have laid them before your Lordships in an improper Light, or a less effectual manner than others might have done; yet the Cause itself will speak better and more strongly than any Words or Expressions of mine can do. It is the Cause, the Honour, the Liberty, and the Liberty of a most Reverend and Learned Prelate, who is to be try'd and turn from those Dignities and Treasures which his own high Merit has well deserved him to, so which he has ever since adorned with the greatest Labours upon what honest and sufficient Grounds, your Lordships have already heard, and I was going to say, without Precedent; but I must own there have been Instances of Deposition, since in the Beginning of Queen Elizabeth's Reign, and since others since the Revolution. But yet they were upon a general Law, then in being, and an Intemperately unreasonably accus'd by those Prelates, after the full Knowledge and Publication of those Laws, by relating to give that Security to the Government, which at those Times was absolutely necessary. And tho' they were peremptory in the last Degree, and their Example might have produced worse Consequences than it did, yet their Punishment went no further. But this is a particular Law, as is intimated for this particular Prelate, subsequent to the supposed Offence, and which is not thought fit to be stretch'd as a Law for any other Person hereafter; and I wish, my Lords, I could say, this Act was no further. But that Reverend Prelate is likewise to be deprived, not of his Life, indeed, but of all the Comforts and Consents of it, of the Commerce of his Friends and Relations, of all that is valuable to him of his native Country, all of Age and Infirmitates, to the Crashty of Strangers and Strangers, and even beyond the reach of his Majesty's most extensive Goodness.

But if your Lordships should pass this Bill, he will still have, I doubt not, the Peace of his own Mind, and this comfortable Reflection, which no Man can take from him; That he shares the Fate of the greatest and most honest Ministers of the last Century: tho' in this Instance also 'tis his Lordship's Misfortune to be very much distinguished. For he, tho' innocent, was afraid of the Violence of the Times, and withdrew from Protection. But this Reverend Prelate has been all along forth-coming, and, as it were, fearful of nothing, and, confusion of nothing but his own Innocence, has fought in all Places to be brought to Trial. That noble Lord's Crimes (or at least his Accusation) were going to be pass'd in a proper Parliamentary Manner by Numbers of Persons. But this Reverend Prelate is to be resolved by Implicances, Inferences, Constructions, and the Conjectures of Deceivers, in Crimes, which he is here ready to deny, and of which no Man accuses him.

I would not be understood, my Lords, by any Thing I have said in relation to the particular Prelate, as if I thought any one Supplication of the Bill had been duly consider'd, or as to deliver this or that Part of the Punishment, tho' I must say, they are all so extraordinary in their Nature, as to deserve your Lordships' Attention. And I doubt not but your Lordships, in your Goodness, will consider what is already said, the Length and Closeness of the Imprisonment which this Reverend Prelate has already suffer'd as a supposed Criminal. Prison before Conviction are only for the Life Custody of a Man, and not for Punishment; but his Imprisonment has not been so; which (if my Information are true) has been attended with such unbrutal Barbarities, and such distinguishing Severities as are a Shame and Reproach to every civilised Nation. The Use of Gallies was only but thought hard and barbarous; but 'tis this Reverend Prelate's Misfortune to be distinguished in this also, as well as in every thing else. For that Cause was before the Law allowed Council or Solicitors to assist a Prisoner in his Defence, but now they are allow'd by Law, and were actually and duly assign'd to my Lord Bishop, and yet Part of his Defence, and Part of his Evidence torn and taken from him. So that, all these Things considered, as Lordship cannot escape without being a very great Subject, tho' your Lordships should utterly reject this Bill.

Your Lordships will justly consider the Infirmities of Body under which that great and noble Mind was now labouring before you, which have render'd him almost incapable of attending his Defence. Your Lordships will also consider the Great and Vexatious it must be to appear as a Criminal before this Honourable House, when he has so long sat as a Judge, and under the Suspicion of those Crimes which are laid to his Charge; and how grievous it is for one of his Lordship's Chancellor and Functions,



to be true with Branches of his Duty to God and Man, of Scandal to Religion, of Designs of overthrowing Church and State, in favour of Popery; who happens to be the only Clergyman in England, that ever thought it worth his while to draw his Pen in Defence of *Martin Luther*, the great Infranchiser of our Reformation from Popery; and who has, upon all other Occasions, appear'd the most strenuous Advocate of it. I might add much more of his Lordship's personal Merits, and of those high Abilities so eminently conspicuous in him; but that I knew it is some kind of Violence to his Lordship to hear even that much mention'd.

Yet suffer me to say, That if these Suggestions should be raised into a Law, without any Degree of Evidence or Probability, but rather (as your Lordships will immediately see) against the strongest Evidence and Probabilities that are possible of the contrary: I say, if this Bill should rest on such Circumstances, whatever the present Age may think, his Case will be a standing Mark of Reproach to it, and he will be the Wonder and the Pity of all succeeding Generations.

I shall add to your Lordships Trouble but one Word more in behalf of myself: That your Lordships will pardon any Warmth of Temper, any unguarded Word or Expression that I may have been guilty of in the Course of this long Defence, in a Case, which every Englishman naturally considers as his own, and therefore with, in some measure, warm the most even Temper. And that this Learned *Jury* whom I will now call *Jurors*; Prayers, and all their little Services, I have been able to perform, and will pardon the many Failings, which I may already have been guilty of, in his necessary and most full Defence.

After the Bishop's Counsel had done speaking, the Bishop produc'd several Witnesses to be examin'd, and on *Tuesday*, *May 11*. Sir *Cyprian Phipps* made a short Recapitulation of the Evidence, as follows.

*My Lords,*

I have done with our Evidence; and hope we have fully answer'd every Part of the Charge contain'd in the Bill, and apprehend there is no Circumstance left unanswered. Particularly, that we have totally destroy'd the Credit of *Noyes's* Horrible Evidence: For when the *Incredulous, Inconceivable, and Unbelievable* of his Examinations are consider'd, and the *Tyranny of the Whigs* is duly weigh'd; no Person can give the *lost Credit* to what *He* hath said, without offering the greatest Violence imaginable to his Reason.

And it is wonderful, that the Council for the Bill should think he should be credited in any Thing. When we have prov'd, he had the Confidence to declare, that *Two Honourable Persons* had endeavour'd to persuade him to accept of Falsity of Quality of Things *He* knew himself of.

He has not said that, when he was to be examin'd, *The Right Honourable Person* had him first in prison, and told him, what *Witness* would be oppos'd him, and what *Answer* *He* should give? Did he not say, that the very same Gentleman gave him four *Guineas* or *Supper*, and told him what he should reply to each of them? *He* has not said, that refusing to give Evidence, *He* was threaten'd with *Negatives*; and that therefore *He* gave them *Aggravations* against *my Lord Bishop* and *Others*? Nay, he has not the Impudence to say, that the same *Right Honourable Person* offer'd him 2000*l.* 500*l.* per annum, and a *Place*, to accuse the *perjuring Lords*, the *Earl of Ormonde*, and the *Reverend Prebend* And that being refus'd, whether *He* has any thing of the *Plot*? *He* does not, nor say *He* did; but that he knew of no other *Plots*, viz. one *Mr. Mordaunt* against the *Presbyterian Lords*, the *Order of Hierarchy* upon *Mr. Hobbis*, to get 2000*l.* of him. Nay, it is prov'd *He* declared that the same Gentleman promis'd him 500*l.* to write *some Papers*, that *He* had in secret in his Mind to take up, and that *Right Honourable Person's* Speech, and *his* *last* *words* with us, do make an End of the *Plot*.

There are things which have been said upon *Noyes*: And all these Things being consider'd, I believe the Council for the Bill will readily agree with me, that as *Gravel* ought to be given to our Word *He* has said: And of *His* Evidence he had said, the greatest Part of the Charge against my Lord Bishop falls in the Ground.

*My Lords*, the Evidence *Mr. Lewis* gave was very material. For he shew'd your Lordships, that *Bracken*, who was of the Post-Office, was so foolish in a *unwarrantable Manner* and *fool*, that he wrote the Supercription of a Letter, and took the Impression of a Seal, and seal'd it again; and did it so well, and gave it such a Lustre, that *Mr. Lewis* could not distinguish it from the Original.

The *Esquire* likewise said, they could take off the Impressions of Seals so well, that they could not be distinguish'd: Nay, that the Wax were broken, yet if no Part of the Wax were left, it might be done.

Your Lordships observe how the Engravers themselves were mistaken in relation to false Impressions, which were produced to them: And *You* further observe, that the Seal in question was a *Crown's Head*, which all the Engravers agree to be a very common one; and they had many of them: So that no Objection can be made against my Lord on account of that Seal. Nay, one of the Engravers said, it appear'd to him that the Seal of the *real Letters* were not the same. As to the *Dye*, there is *Mr. Cornford's* Certificate, and *Burningham's* Affidavit.

As to *Mr. Bern's* Evidence, the *Jury* found out now, That there were *Two Days*, tho' nobody else ever heard of *Two*. She said, the first was for the Bishop of *Rochester*. Now it is plain, the *First* was sent in *March*; and it was *His Leg* that was broken. And *Burningham* swears, and *Mr. Kelly* solemnly affirms, that it was for *Mrs. Bern*, and not for the Bishop.

As to the *Three Letters* of the 20th of *April*, we have prov'd it impossible that the Bishop should write, or dictate these Letters to *Mr. Kelly*. And your Lordships take Notice, how this *Badly* came to observe these Letters could not be written by the Bishop; and the *Severals*, tho' under Confinement, and not permitted to see any Body, agree in their Evidence. There is *Gravel's* Affidavit that he never had such a *Parquet*: And *James Talbot* was here in Town the 29th of *April*.

Thus, your Lordships observe that a Bill of the most extraordinary Nature that ever was *form*, hath been supported by the most extraordinary Evidence that ever was *form*: And we hope, we have set the *dark Passages*, of which the Charge is compounded, in such a Light, that every One

may plainly see the Right Reverend Prelate is not guilty of any One charged against him.

*Mr. Wynne* spoke next.

*My Lords,*

I shall beg your Patience to close our Defence with an Objection two on the Evidence that has been given by my Lord Bishop. We need take up the loss of your Lordships Time, because our Witnesses fully answer'd all I propos'd, and in many Things have exceeded my Directions.

And for your Lordships clearer Apprehension of so many various perplex'd Facts, I shall just recapitulate what I humbly conceive to be the Substance of the Charge against my Lord Bishop, and, as well as I can, state the Evidence, which we have produced in order to disprove it.

The first and chief Accusation against his Lordship was founded on the Informations of *Philip Noyes*, and therefore the first Part of our Defence was to his Credit. Your Lordships, I doubt not, remember the Report of his Information said against us, and the many great Abilities and Accomplishments in his other Information read by us; and how fully they have been all disprov'd, and the Credit of them entirely blotted, even from *Noyes's* own Certificate. Several Times repeated, and confirmed by three unexceptionable Witnesses.

Your Lordships have fully heard of the *Terrors* and *Apprehensions* we continually under; because (as he himself express'd it) he had given false Informations against this Reverend Prelate, and to many other eminent Persons. Your Lordships have heard the Indocuments he had given those Informations, and how often he had declared his Intent to escape, in order to avoid the Punishment which he apprehended most justly due to him, because he could not make out the Truth of them.

Two of these Witnesses (*Boyle* and *Steele*) are still in Custody, and disfigure almost all the Necessaries of Life: I say, my Lords, they are still in close and strict Custody, and consequently there could have been no Opportunity to lead or instruct them in what they should say, or as much as to be apprized beforehand (which surely would have been a sensible Liberty) whether they could say any thing material or not; as we see only beholden to those lights, which the Report of their Honorable Committee has afforded us: And all these of these Witnesses, unknown to my Lord Bishop both in Person and Reputation, as well as his Lordship is unknown to them. They have not conversed together for several Months, but yet are perfectly consistent with themselves, and entirely supported and confirmed by each other. And all three declare they had very early told, and frequently repeated this Account of *Noyes* to their Fellow Prisoners and Acquaintance, as long as they were permitted to have Access to them. *Mr. Shaw* bring'd in a Relation to the Dispute between him and *Captain Paus*, as in the printed Deposition of *Paus*, App. D. 1. has denied us his Oath every Word of it. *He* says, indeed, that *Captain Paus* us'd all his Endeavours by Treat and Enticement to induce him to support this Information; but that he never gave him, nor could give him Grounds to say any such Thing of his Lordship.

We have shewn your Lordships, that *Mr. Streater* in particular was far from patching up, or contriving Evidence (as was objected on him by the Council for the Bill) after he had seen the Report and Appendix, that he had given this whole Account to several Persons long before. For he says, the Things which *Noyes* told him were so surprising, that he could not suffice them in his own Breast. Though your Lordships, I doubt not, observed with what Difficulty and Modesty he was brought to speak on in this publick Manner, where his Evidence seem'd to reflect on a great and Honourable Person.

Two of these Persons have likewise been produced to your Lordships. One of whom (*Mr. Corbin*) he told these Matters four Days even before *Noyes's* Death; and to *Mr. Ayscough* five considerable Time before the Meeting of the Parliament: and we could have called others to the same purpose, but that we were unwilling to give your Lordships further Trouble in a Matter which already had, as we thought, the fullest, the most satisfactory, and consistent Evidence that could be.

The second Head of Accusation against this Reverend Prelate, was upon Account of the three Letters of the 20th of *April*. The law first we before observed to your Lordships not to be criminal, if really designed for, and address'd to the Persons suppos'd. The third we have observ'd upon by various Circumstances and Reasonings, could not possibly be ascribed to the Pretender, whoever wrote it, or whomsoever else it might be wrote to.

And the Evidence offer'd to prove them to have been dictated as writ by my Lord Bishop, was first by the Subscripion of the common Name of *John*, which they would have to denote his Lordship. As to this, I doubt not, your Lordships remember, that even in the Cyphers and Letters that have been read, the Name of *John* is manifestly applied (as the Conjecture themselves have shew'd) to the Circumstances three mentioned to give Occasion, but cannot occur in any Place, with Reason or Justice, be apply'd to my Lord Bishop.

The next Proof that has been offer'd to your Lordships, to prove these Letters to have been dictated or wrote by the Bishop's Private, is, from the ill State of Health, the Death of his Lady, and the Preface of a Drop Circumstances which they say, are applicable to the Bishop, and to him only.

That his Lordship did not, nor could possibly write or dictate these three Letters, we have laid before your Lordships such a Proof, as the like hardly ever was before; and 'tis impossible, in any humane Apprehension, for a Negative to be more fully prov'd in any Case. Your Lordships have heard the great Weakness and Inability of this Reverend Prelate at that very Time for all manner of Business and Conversation. No less than six, if not seven of his Servants, have spoken fully and positively to it, that his Lordship was not able, without their Help, to stir, stand, or in his Bed, or even to perform the common and ordinary Offices of Life. One would think, my Lords, such melancholy Circumstances, as themselves, sufficient to guard any Man from Suspicion.



But the Witnesses have gone much further; for they have told your Lordships, that no Stranger approached the Bishop's Room all that Time; and had any one been, for a considerable Time before and after the 20th of April, under his Roof. Even those few Persons that usually were in my Lord Bishop at other times (as his Son, his Chaplain, and his Secretary, &c.) never happened then all to be absent at the Election of *Wylliams*.

On a short Inquiry, who happens to be a Physician with his Lordship, and the *Trust*, being asked, whether my Lord Bishop had not put out a great deal of these *Care* and *Endorsements*? Told your Lordships, that it was his Son, *John* *Recoil* *Esq.*, by casually taking up the Report, after my Lord Bishop was gone to Bed, and dipping on that Part of it, in which my Lord Bishop charged with having writ these three Letters. Upon which, the next Day (he said), talking to his Fellow-Servant, and he agreeing to the very same Circumstances, they acquainted the Bishop with what they had read, and how they came, & from their own Knowledge and Remembrance, fully and disposed that Circumstance.

I must likewise come here to declare to your Lordships, that four or five of these Servants, that have I spoke to use particular Facts and Turns, all as *Catholically*, under separate Messengers, without any Opportunity to converse together, and were hardly to be found by my Lord Bishop, when he had need of their Evidence, and yet every one of them have been perfectly consistent with themselves, and one with the other, and all equally positive.

The Bishop's Coachman, your Lordships, I do not not remember, also under another Influence, and called as Witness against his Master, continued what they said, and was as positive and presumptuous in his Testimony concerning this Matter, as far as the Nature of his Employment gave him an Opportunity to make such Observations. And upon the whole, I may now, with more Reason, and with greater Confidence, repeat my former Assertion, that it is impossible for them even to devise a false or a Scheme, so prove his Lordship to have wrote or dictated these three Letters, but what will be actually disposed and fulfilled by some Part of the Evidence.

Another Reason, by which it is proved that his Lordship wrote these three Letters, was, from the Subscriptions of the Number 1723, the Letter addressed to *Jackin*. Which Number Mr. *Wylliams* (a Deceyphered) says, denotes the proper Name or Title of a Person beginning with the Letter *B*. The little Time we have had to signify such an Assertion, your Lordships are permitting; some Questions put by us to the Deceyphered to be answered, well enable us fully to dispose it. But, with Submission to your Lordships, it seems impossible to affirm even thus much with any degree of Certainty, and it must be (as I before observed to your Lordships) Matter of Conjecture only; and it appears manifestly in your Lordships, by several Passages occurring up and down in this Correspondence, not yet depressed, that either the Art is not to be subtle, or that Mr. *Wylliams* is not to go as an Artist as he pretends to be.

But, my Lords, admitting such a Number in this Cypher does really denote a Person's Name, or Title, beginning with the Letter *R*, what a strange and uncertain Proof is that, to fix a Charge of High-Treason on the Bishop, when there are other Persons Names and Titles found besides, and many others which begin with the very same Letter; and as not to be admitted as Evidence in a minute or inconsiderable Circumstance, but in the very Gift of the supposed Offence, in the principal Foundation of the Charge, in the only Letter that is criminal; and, which is to magnify and suppose the rest, into High-Treason?

Another way of proving these Letters to have been dictated by the Bishop, was, because another, supposed to be an Answer to the first, mentions the Preface of a Dog. I think not here repeat what Mr. *Kelly* himself has certainly said in his Examination, because your Lordships, I doubt not, remember what Mr. *Barrow* said; That Mr. *Kelly* indeed sometimes told her of another Dog, that was for the Bishop, but that she always apprehended that Dog, which he had in her Possession, was designed for her, and never heard of any other Dog that did come from *France*: She says, that she never received any one Message from the Bishop about it, but still kept it, when it was recovered, as her own, as long as it lived; and that his Lordship never had, nor loved a Dog in his Life, yet it would have been natural, and good Manners to the Person that sent it, especially if of considerable a Person as it is supposed, to have made new and then force little Enquiry about it, if my Lord Bishop had really known any thing of the Dog.

But we have known your Lordships by the solemn Attestation of Mr. *Barrow*, the French Surgeon, that he was the Person who gave this Dog (in March 22.) to Mr. *Kelly*, for Madam *Barrow*, of whom he had received Civilities in *London*, and for no other Person, nor with any other Intent. He likewise says, that he never knew of any such thing as a Dog, or Message from Lord *Mans*, (as alleged in the Report) never had any the least Thought of the Bishop of *Roche*, or his Lady, much less of making either the one or the other (to both of which he was strictly unknown) any such Person.

Your Lordships observe this to have been a solemn attested Act upon Oath, of a Person not only reputed, but attested likewise by the Lord of the Signet, to have been a legal Notary, and to have exercised his Office as such for some time. That the Testimony of such a Person being so is a good and unexceptionable Proof in every Case, I need not say; or that it has been often allowed here, where no other is to be had, by any other (as a) Method to have the Benefit of a Man's Testimony that is beyond Sea. And one Witness has told your Lordships that he has frequently translated such Instruments: That he believes it to be the Notary's Hand-writing, and the public Seal of his Office. I stand not, my Lords, have said this much; for in all Events it must have been of more Weight in your Lordships Judgments, than the Extract of an Information given by a Person infamous in his Character, absurd and inconsistent in all he said, and without being signed or sworn to, even by that Person.

But yet this Affidavit of Mr. *Barrow* has the more Credit, because his Majesty's own Resident at *Paris* (Mr. *Crauford*) has been pleased to examine him about this Matter, (being employed by him in his Profession as a Surgeon), and he has confirmed the same Account to him, which has been likewise translated, and read to your Lordships.

Another way of proving my Lord Bishop to have been concerned in these Letters, was from the Hand-writing, which is supposed to have been *Kelly's*, and he is supposed to have been his Lordship's Secretary in these Matters. But both these Allegations we think, with Submission to your Lordships, are still more defective of any proper or satisfactory Proof.

I before observed to your Lordships, that the first time the Clerks of the Post-Office have made any Deposition about the Similitude of the Hand-writing, was four and eight Months after they had seen the Original Letters, which is a kind of the latest to exclaim to remember all the little Strides and Turnings of a Pen, by which the Identity or Diversity of a Hand can only be made out. That *Messrs*, the Factors of Mr. *Barrow*, was never called upon for his Testimony till January last, that is, nine Months after he had seen of *Kelly's* Writing; and consequently not then very able (if ever he was) to form a Judgment of it.

I have already observed to your Lordships, that this was the first, and the only Instance, that any Evidence of the Similitude of Hands was ever admitted, but where the Papers pretended to be in the same Hand were produced and compared in Court, which is so far from being the present Case, that the Clerks of the Post-Office never had any Opportunity of comparing the Original of the 20th of April, with any one of the three Originals of the 20th of April, or with any one of the Sections in the Letters which they affirm to have been in the same Hand: so that they were made the absolute and ultimate Judges of this Matter, without any possibility, on our Side, of detecting any casual or wilful Mistake.

And I would not again repeat an Observation I have before made to your Lordships, that a great part of these Letters are in Figures; and how much more difficult it is to distinguish the Hand of one writing in Figures, from Words and Syllables in length; because we have known your Lordships, by three positive Witnesses (well acquainted with Mr. *Kelly's* Writing, one of them above 20 Years, and his School fellow), that the only original Letter of the 20th of April, stop'd at the Post-Office, as a Sample to the rest, (and which is the only Foundation upon which those Clerks have affirmed these three Letters to have been *Kelly's* Writing) really and in fact was not his, nor like it. This, my Lords, we have fully proved by three Witnesses; and as a Demonstration of what they said, they shew'd your Lordships, among a Variety of Papers produced to them at your Bar, that they could at once distinguish which was *Kelly's* Hand, which was any thing like it, and which was not.

We have likewise produced to your Lordships, the solemn Attestation, on Oath, of *Alexander Gordon* Junior, the Son, *Baronet* at *South*, that no such Packet of Letters ever came to his Hands, as mentioned by the Counsel for the Bill; and consequently he could not deliver any such to *Talbot*, (who, they say, called for them at *Roche*). He farther declares, that he never had any Business or Intercourse with *Kelly* or *Jackson*, nor ever had acquaintance with any Person he called, on his whole Life.

And we have proved to your Lordships, that *James Talbot*, the tall black Man, (a) described in the Letter printed in the Appendix, and who is supposed to have been the Person that called upon *Alexander Gordon* at *Roche* for this Packet, was so far from doing it as the Time passed, that he was at *London* that very Day, as appears by the unexceptionable Testimony of *Edward Griffin*, his Shoemaker, and by the Entries of his Shop-book, to whom he accidentally paid a Bill upon that very Day, at his House in *London*.

We have likewise shown your Lordships by two Witnesses, Mr. *Kilburn*, and her Maid *Mrs. Ellis*, that Mr. *Kelly*, was at her House in *London* on the 20th of April, (the very Day upon which my Lord Bishop is supposed to have dictated these Letters to him) and by a great Variety of Evidence, impossible to expunge any one's Memory, that my Lord Bishop was all in Bed, at *Bromley* in *Kent*; and *Quod non datur alibi in Actum*, is an Access of Reason as well as of Philosophy.

And I must humbly submit it to your Lordships, that it has not yet, in the least, appeared by any Shadow of Evidence, that Mr. *Kelly* ever was employed by my Lord Bishop to carry on a Correspondence; that he wrote any one Letter for the Bishop, upon that, or upon any other Occasion whatsoever.

That Passage in the Letter to *Wylliams*, that seems to give countenance to such a Supposition, the learned Counsel for the Bill told us yesterday they had waved, and were sorry that we should offer to disprove that which they had not proved. But, with Submission to your Lordships, that they have been pleased to wave that Part of the Charge against my Lord Bishop, yet, as it makes no small or inconsiderable Appearance in the Report of that Honorable House, and will be so handed down to Posterity, we thought it proper to give an Answer to it; and, we hope, it has been to your Lordships Satisfaction, and still in your Memory.

The next thing was the Letter to *Dalton*; and I confess myself at some loss to know for what purpose there was read in Evidence to your Lordships; for the Counsel for the Bill have not, as yet, made any particular and direct Use or Application of that piece of Evidence, and therefore I shall submit it to your Lordships upon the Observations I before made on it.

There was indeed some of your Lordships Time spent in comparing the Seal of that Letter, with that which happen'd to be taken on my Lord Bishop's Servant at the *Yewer*; if it was intended as any Proof, I cannot at present judge, however, we thought it proper to follow them in the Course and Manner of their Proof, and your Lordships yesterday have fully heard the Danger and Uncertainty of admitting such a Proof. First, you have had some Account from Mr. *Erasmus Lewis* of the known Practice of

(a) 9 *Ball's Rep.* 216. *Letter of David* 2.(b) *Rep. Rep.* 40-43. *Append. E. 16.*(c) *Append. E. 26.*















Charges made out against me with any Colour of Reason? Suppositions without Proof, Suppositions disprov'd, and shewn to be vain, and the Po of in these Cases wants Strength, can the Hearity of *Nogus* the want of Proof, and render invalid, since *Nogus* proceeds, for that appears, not to have known any thing of it? He only is said by Mr. *Eds* to be *an*, and there is, I think, no Reason, but a dead Evidence should affect me, or *Kelly* himself, much less him. Was *Nogus* alive, and *Kelly* dead, and incapable of coming to what *Nogus* said, I believe what *Nogus* said would not be of Weight but, besides, what *Nogus* dead says, and *Kelly* now alive denies, we need not have any Force.

Concerning *Hearity* Evidence in general, and concerning the due Reason, I shoud be sure your Lordships, these Papers, may be read out to a Friend's Bill of Attainder. [The same I thought read.] I think, I shoud be sure to have this read, because I think it would be a Difficultie between Legal and Parliamentary Evidence, that is, what Legal might be Parliamentary. I believe here in a Court of Law it is by Parliamentary Evidence. It is record in this Act, as are the Indemnities that men of the King, Lords, and Commons to that Act, that but *John Fennell* had conspired and conspired several Papers, only by *Hearity*.

That that is accepted in this Parliament for Evidence, which is declar'd in Motion of attaining a Man in another if it was judg'd hard in *John Fennell's* Case to charges Man be *Hearity*, can the being that it be any Proof against me? Sure the House of Commons as yet, that it is not, it would have to be thought, not would take of your Lordships considered here, or otherwise, to have paid it.

As for those that did not consent, I will answer to say, I am exceedingly puzzled to know why they did not oppose *John Fennell*, but they did not, and are yet against me. In the Guild elected to me, if you, in any Measure like him? Or is there any Comparison between the two against him and me?

As to the Paper and Information given by *Nogus*, and printed in the Appendix, it is plain he was drawn in to have been backward or forward, as he would or deny'd any thing. He knew a certain Lord of declaration, that gave me Notice of my being tried in some Days, because it happen'd. He knew what Use and Purpose the Pretence of your Lordships were chiefly design'd for and calculated, and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positive Account, and design'd either to sink or rescue such a Sea of Money.

It is said he was the late Earl *Arundell's* Bed-fellow for several Months, and had drawn up Heads for Monarchs to be it moved to the Regents, but he had kept no Copy of these Heads, or had Draughts which would have shown whether they were given in to promote it, or discover it, in the late Case the Evidence of being these employ'd would have been of Service, but they have not been able to produce a Line of such Heads or Memorials, but the Report of the House of Commons, upon the Bills of late Monarchs, builds the whole Fabric. He knew that I went under the Names of *James* and *Alington*, and undoubtedly he knew Mr. *Dun*. If the Scheme of writing that Letter myself had been free, he would have found out a Reason for the Correspondence, and you I would have told him others, I have seen'd the Letter himself. He knew the Pretence of a positive Opinion of me, or of any body else, and that he rely'd in others from me. How did he know that? He told him so. What? It is not suppos'd Mr. *Kelly* had it from himself, but from Persons of high Estate, and that were near the Pretence.

Let me speak, my Lords, as always I hope I shall, with that Modesty becomes *Julius*, but yet with Freedom, to you.

Nothing being open'd to you concerning this Man's Character, and he being Transferred: Is it possible to believe this Pretence to Society would have had, or shall he still have any Degree of Weight, that threw away his Life, rather than venture to stand in the Truth of what he said? For his Death, and that he could have been contradicted, or Fange of Contradiction might have made him say what he had said? But a dead Man can contradict nothing; what he has said, he has said. The Accusation must stand as it did, for as it concerns him, and we are deprived of his Advantages, which Truth and Remembrance extend, and would have been extorted from him. However, I would have been glad to have had all that ever the *Walter* said, and would hope that by comparing of the several Stories, which in several Times said, some Light might have been gain'd, which is now wanted. Particularly by the Knowledge of what he said freely and voluntarily, what he was in good Nature, and how he was Ugly, as he Return from *Rome*, had I might have said, we have the Evidence only of a few of the last Days of his Life, the preceding Time is black. He underwent frequent Examinations, they were not, it seems, to maturely weighed and digested as to be able to write the committing to writing: but he is gone in his Place, but would for what he has said at another Tribunal. I desire to diffuse his Affairs, rather than what is necessary for my Defence.

Lordships will deliver first, the Incongruity of some Part of the second. Secondly, the Improbability of it. The Report takes Notice of several Periods, or Stages of Time, when, by Consequence of Informations from the Regents, the Design did not take Place: The first, during the Election; the second was, the King's going to *Spain*; and the third was, the breaking up of the Camp. These are not that is to the last of these three Druggs, in any of the Papers; the Recital of the Bill is mention'd in the third Part of the Plot, the most difficult Part of the Design, to lay violent Hands on the King, and the Royal Household.

There is the least Colour of Proof as to the first Part of the Conspiracy which was to take place at the Election; they only Reason for it from the Papers, where it is said, that the present Opportunity is that, that is, the Opportunity of the Election.

I shall retire the Passage, as 'tis in the Interspersed Letter, and make some Reflections only: *Naturally* the Opportunity is slight'd, (i.e. the Weakness to *Julius*.) I agree with you, another may offer before the End of the Year, and so on—*perhaps* it will be so favourable.

The Committee suppose this Letter to be from *Kelly*, and declared by me, and they suppose the Words to refer to the time of the Election, and from that supposition infer that I know something of it. On the contrary, I think, on the two first Suppositions there the Improbability of it; if this was a Letter from me, or from any other Person, dictated by me to the Printer, I must write as in Answer to some Letter sent from them to me, in repeating the Expression; and his *Cyprian* in the Letter must have been founded on Intelligence before seen'd: This Intelligence, considering the Distance between *London* and *Rome*, must have been communicated two Months, if not longer, before the Date of this Letter, if we go back two Months, and talk of the Election being delay'd, it was not begun; consequently that Opportunity, in the Letter could not possibly mean the Time of the Election, and so it is, it is impossible that it should be a Letter to the Pretence, that can consist with the Charge of the Period a writing in April 1720.

If it be a Letter were a good Example, it appears they had given me all Thoughts at that Time. I agree with you, says he, another may offer before the End of the Year; and yet he finds these Words in a Letter sent to him, after, whereas, under the Name of *James*, I was made to be deeply concerned in a Conspiracy.

How can this be consistent, if I write and dictated that Letter, and was engaged in the second Part of the Conspiracy?

It is either to be true, both may be false, and I hope I have satisfy'd your Lordships, that at I did not declare the one, so I was no ways concerned in the other.

Can any one believe, that under the sad Circumstances of being afflicted by the Death of my Wife, I should be concern'd in an Affair of this dangerous Nature? Was that a Time to provide for a Marriage? And for a Man, who under the Power of Pretence, to believe such an Improbability, or that I had such a Conjecture? I forbear further Inferences.

I shall now consider the Improbability, as well as Inconsistency of the Charge brought against me without positive Proof. You will allow me to assert the Improbability to the same Measure as it is here.

It is probable that if I were engaged in any such Design, no Pretence should be seen of any Correspondence I had with the late Duke of Ormond, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and shall have all the Regard that is consistent with my Duty to my King and Country?

It is probable that I would choose rather to engage in such a Design with Mr. *Dolus*, a Military Man I never saw, and with the Earl of *Mare*, whom I never convers'd with, except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretence several Years, and had a Pension abroad? Is this a Pension for me to enter into Correspondence with him about seducing the Pretence, and do this not by Messengers but by Letters, not sent by Messengers but by the common Post? That by that writing to him by the Post, I should assist him after the same manner to write to me, and by these Means furnish Opportunities towards seducing the Pretence, and bringing myself into Danger? How does that conflict with the Custom and Secrecy which are said to belong to me? Must not I have been able to have had myself open as such a Man? This is an inconsistent Scheme, the other a bold Addresser. It is probable, when attempting the sick Bed of my Wife, and expecting her Death, not daily but hourly, that I should even use Negotiations of this kind?

There was no need of dispatching any of these three Letters, merely to excite my not among. The Circumstances of my Family had been a sufficient Apology, and more effectual.

As it is probable, that when I was carrying on public Buildings of various kinds at *Windsor*, and *Brooklyn*, consulting all the books from the *Windsor* Foundation, engaging in a Correspondence with learned Men, about finding an Imperfect Part of Divinity, that at that very Time I should be carrying on a Conspiracy? I hope that certain such Thoughts without Reason, may also condemn me without Argument.

It is probable that I should meet, and consult, in order to carry on and forward this Correspondence with nobody, and no where?

That I, who always liv'd at home, except at Dinner-Time, never shou'd out of my Chamber, receive all Persons that visited me, and was desir'd to receive, should have an Opportunity to be so engaged? And if I had, that none of my Domestic and Friends should ever observe any Appearance of such a thing? No Evidence among my Papers, though there were all kind of both my Heads, and confirming all my Services, but one now, for about 10 or 12 Weeks, searching him twice in the Year, and searching my self, nothing of Consequence appears, nor is there any one living Witness that charges me with any thing that is really true.

It is probable, that I should form and direct a Conspiracy, and carry it on with any Success, that are not us'd to Arms, which I am no more acquainted with, than with the Persons employ'd on those Occasions? My way of Life hath not led me to converse with such Men and such Masters, except on the Occasion of meeting in Parliament, but as a Council of War I never was. Have I yet, in any Instance of my Life, meddled remarkably out of my own Sphere, in Affairs foreign to my Business or Character? I might have been thought to have been too active in my proper Station and Business, but I was never charg'd with War, nor any ways inform'd in the Art of it.

It is said, that Persons concern'd in the Military Way, should be passively without any Proof?

And must I, whose Way of Life is set at the greatest Distance from such Persons, and from the very Suspicion of being concern'd with them, suffer all the Pains and Penalties, Fleet of Death, which the Parliament can inflict, for a suppos'd I know not what, and what I don't to this Day apprehend?

Here







I am charg'd with the Report with sending a Correspondence to your Lordships, but I solemnly deny that I ever, directly or indirectly, saw a single Line of any of their Letters, till I met with them in Print. Nor did I ever see the Contents of any then communicated to me. I do in the plain place deny, That I was ever privy to any Memorial to be drawn up, or deliver'd to the Regent. Nor was I ever acquainted with any Attorney to be made on the King's going to *Hannover*, or at the Time of the Election.

Nor did I hear the last Rumour of a Plot to take place after the breaking up of the Camp, till some Time after Mr. *Ligon's* Commission. I do with the same Solemnity declare, That I never collected, received, or add'd any Money of any Man to facilitate their Designs; nor was I ever acquainted with, or had any Remembrance whatsoever, of any of those Persons. I never drew any Declaration, Minutes, or Papers in the Name of the Pretender, as is expressly charg'd upon me. And I need know of any Commission, or Preparation of Arms, Officers, or Soldiers, or the Methods taken to procure any, in order to raise an Invasion in these Kingdoms. All this I declare to be true, and will be true to the last Gall of my Breath.

And I am sure, the farther your Lordships examine into this Affair, the more you will be convinc'd of my Innocence. There contain all the Circumstances of which I am accus'd in the Report of the House of Commons.

Had the Charge been as fully prov'd as aforesaid, it had been vain to make Proclamations of my Innocence, tho' never so solemn.

But as the Charge is only supported by the slightest Probabilities, and which cannot be establish'd in any Instance, without proving a Negative, and the solemn Affirmations of a Man in behalf of his own Innocence to have this due Weight; and I ask no more, than that my Lordships will have this in Consideration as they have Truth.

If, on any Account, there shall be thought by your Lordships to be any pressing Reasons in the Proceeding against me; if by your Lordships' Judgment, springing from unknown Motives, I shall be thought to be guilty, if for any Reasons, or Necessity of State, of the Wisdom and Justice of which I am no competent Judge; if your Lordships shall proceed to pass this Bill against me, God's Will be done: *Natus sum iudex iudicis, iudex, iudex, iudex* I return; and whether by given or taken, as is said by the Name of the Lord.

My Lord, I was oppos'd for the Reply to the Counsel for the Bill, who were Mr. *Rose*, and Mr. *Worce*. Mr. *Rose* spoke as follows:

I do permit me to offer something, by way of Reply to the Arguments which has been made use of, and the Evidence that hath been given, in Behalf of the Bishop of *Rochester*.

My Lords, I shall not trouble your Lordships with entering far into the Arguments so much insisted on by the other Side, concerning the Power of the Parliament to pass Bills of Attainder.

They have been spoken of by the Counsel of the other Side, as inconsistent with our Constitution; Bills of Pains and Penalties, and Bills of Attainder, have been treated by them as unknown to our Constitution, which in our Infancy, which afterwards have been consolidated.

And yet they have mentioned the Case of *St. John's*, which is a precedent of a Person attain'd without legal Evidence, tho' he went forth coming and amenable to Justice, and his Attainder remains still unrevok'd. And as to Bills of Pains and Penalties, they should, hearken that, inasmuch as to much against them, have consider'd, that two such Bills have now already pass'd your Lordships House; and the Bills against *Guiney*, *Bernard*, and others, and against the late *South-Sea* Directors, are Precedents of Bills of this Kind.

They have mention'd many Instances where Persons have been prosecuted according to the known Rules of Law, and the Parliament did not think fit to interpose. And doubtless, my Lords, generally speaking, where Evidence is to be had and to be produced, and the Persons are forth-coming, it is right to proceed according to the known Rules of Law in the ordinary Court of Justice.

But where Conspirators are carrying on their Design with Art, and endeavour to shelter themselves from their known Rules of Law; we intend, my Lords, the ordinary Prosecutions at Law will be no Argument against the Legislature's making use of their Authority, when Circumstances of the Case, the Preservation of the Publick Peace, or the Safety of the Constitution require it.

But I beg leave to mention one Instance, which they are mistaken: we have said, that in the Case of the Regicides (that horrid and detestable Treason) they were all prosecuted according to the ordinary Rules of Law; but if they had look'd into the Acts of Parliament, they would have found, that four of them were punish'd by Bills of Pains and Penalties. The Lord *Alington* and others, who sat as Judges in the peculiar High Court of Justice, were refer'd by two Acts of Parliament that, to have Pains and Penalties inflict'd upon them; and tho' there was no Instance in that Case to have attain'd them according to the ordinary Rules of Law, the Parliament did proceed to punish them by Pains and Penalties; and they were not try'd according to the ordinary Course of Law.

This I beg leave to observe to your Lordships, in relation to the Power and Usage of Parliaments in passing Bills of this Kind.

My Lords, in the next place, I beg leave to take Notice, That the Objections that have been made, and the Evidence that hath been given by the other Side to Facts mention'd in the Report and Appendix, concerning what has been given so Evidence as all, ought to be, all out of this Case, as foreign to the Matter before your Lordships. The Matters we have given in Evidence, it was proper for us to submit; but they have gone into the Report and Appendix, in order to dispose Facts mention'd there, tho' we saw no Evidence concerning them, and we humbly apprehend, it is not necessary for us to follow them: as to that I say, for if we maintain the Charge we have given, it doth not concern us to make good every Article of the Report and Appendix, relating to this Reverend Prelate, now before your Lordships.

My Lords, we must submit the Evidence produced to charge the Reverend Prelate, as follows.

Reverend Prelate at your Lordships Bar, is not all of it Evidence directly against him, if he was to be try'd according to the ordinary Course of Justice at *Westminster-Hall*. But, my Lords, we humbly apprehend you are not to be try'd at *Westminster-Hall*; for if your Lordships are satisfied that the Facts proved, laying them all together, do conclude the Reverend Prelate at the Bar guilty, notwithstanding they do not amount to Evidence according to the ordinary Rules of *Westminster-Hall*, your Lordships will be of Opinion, that it is fit he should be punish'd.

My Lords, the Evidence that hath been given by us, as to Facts committed by the Bishop of *Rochester*, hath been chiefly from three Letters, dated the 20th of April, 1723, each of these was written in the Hand of Mr. *Kelly*, and dictated by my Lord Bishop of *Rochester*.

My Lord, these Letters are sent, some Part in *Cyphers*, and some Part are, they are sign'd by the Names of *T. Jones*, *T. Alington*, and the Figures 1723. My Lords, if these three Letters are proved to your Lordships Satisfaction to be the Letters of my Lord Bishop of *Rochester*, we humbly apprehend they do prove all the Allegations in the Bill, which my Lord Bishop of *Rochester* hath been pleas'd to call upon us to prove that he hath been guilty of. They do contain, as we say, and as plainly appears from the Letters themselves, Matters relating to consulting and conspiring to raise a foreign Force into this Kingdom for an Invasion, and to promote an Insurrection. And if the Name of *Jaques* is the Name by which the Pretender is signified, that Letter will prove the other Part of the Bill, that the Bishop of *Rochester* hath had Correspondence with the Pretender himself.

My Lords, I beg leave to observe upon the Word *Jaques*: It hath been insisted upon, that tho' it is contain'd in *Plasden's Cypher*, yet *Jaques* may signify in Mr. *Plasden's* Cypher are things, and in their Letters another; and these Letters are contain'd in *Jaques*, and not their Cant Words and Names, as in Mr. *Plasden's*; but in the way they go, to admit that in *Plasden's* Cypher the Name of *Jaques* stands for the Pretender.

My Lord Bishop of *Rochester* was pleas'd to observe, that in all the Correspondence between Mr. *Kelly* and the Persons with whom he corresponded abroad, there is no Name contain'd in Mr. *Plasden's* Cypher, which *Kelly* hath made use of in any of his Letters, but this.

My Lords, it appears to your Lordships, that in the Correspondence between Mr. *Kelly* and the Persons also, several other Names, mention'd in *Plasden's* Cypher, have been used: and it is not material, whether these Names are contain'd in the Letters writ by *Kelly* himself, or in those of his Correspondents writing to him. When his Correspondents write to him, in answer to his Letters, they use several other of the Names which are contain'd in *Plasden's* Cypher; which, my Lords, we humbly apprehend is the same Thing as in this Purpose, as if they were said in Mr. *Kelly's* Letters; for he must be pleas'd to know the Meaning of those fictitious Names, when they are contain'd in Letters that come in answer to Letters from him, as the Correspondence which he carries on; and we humbly apprehend, my Lords, that it is as strong an Evidence, as if they had been contain'd in the Letters writ by *Kelly* himself. Therefore, my Lords, I beg leave to take Notice of several Names that are in Mr. *Plasden's* Cypher, and used by Mr. *Kelly's* Correspondents, in their Letters to him.

There is the Name of *Blond*, which stands for *Wigan*; the Name of *Lane*, which stands for Lord *Merr*; the Name of *Gary*, which stands for *Dillon*; and the Name of *Hawell*, for *Gibson*. My Lords, all these Names are in Mr. *Plasden's* Cypher, and made use of in the Letters that pass'd between Mr. *Kelly* and his Correspondents.

My Lords, I shall beg leave to submit to your Lordships, when, among Persons concerned in carrying on the same Conspiracy, Cyphers are made use of, and in the Cyphers of some of the Conspirators are contain'd the Names of the Letters writ by others of the Conspirators are contain'd, whether it is not a reasonable Evidence, that those fictitious Names contain'd in the Cyphers of one of the Conspirators, and made use of in the Letters of the other, signify the same Persons; unless there is something to distinguish the Case, and show that the same Names are made use of to denote several Persons.

My Lords, we humbly submit it to your Lordships, that it is plain from the Evidence we have given, that the first three Letters are writ by the same Hand, and by the Circumstances in the Letters, they appear to be dictated by one and the very same Person. Therefore, my Lords, the Enquiry will be, who is the Person denoted by the Names of *T. Jones*, *T. Alington*, and the Figures 1723? For if we have prov'd the Bishop of *Rochester* to be denoted in this Correspondence by the Names of *Jones* and *Alington*, and that their Letters were written by *Kelly*, and dictated by *Jones* and *Alington*, then the Bishop of *Rochester* is the Person by whom these Letters were dictated.

This will appear to your Lordships from other Facts contain'd in Letters intercept'd in this Correspondence; Facts that, all of them together, can relate to no Person but the Bishop of *Rochester*.

The Circumstances of the Bishop in his Family are exactly described in the three Letters of the 20th of April, and those Circumstances plainly shew, that all the three Letters were dictated by the same Person, and that the Figures 1723 denote the same Person that *Jones* and *Alington* do.

My Lords, there are several other Facts contain'd in the intercept'd Letters, that denote *Jones* and *Alington* to be Bishop of *Rochester*. One of them is, the Fact relating to a Day lost over to Mr. *Kelly*, which appears, by the Evidence given, to have been designed for the Bishop of *Rochester*. Therefore, in the Letter mark'd B. 37. (that is, a Letter to Mr. *Kelly* by the Name of *Hawell*), and directed to Mr. *Hawell*, undeliver'd in the List of Directions taken in *Kelly's* Pocket-Book) the Letter mentions the *late* *Dr. Jones* *was* *in* *the* *Day* *ago*, and *order'd* *to* *be* *delivered* *to* *you*, *&c.* My Lords, afterwards Mr. *Kelly*, by a Letter dated the 20th of April, 1723, E. 35. (it is a Letter from *J. L.* one of Mr. *Kelly's* Names as *Hawell*), and which have been given to be Mr. *Kelly's* Hand-writing) says, I named the *Prebost* just by the young Lady, but in such a bad Condition, that I am afraid he never will do well, for he had a Leg broken in his Journey, which is not 3 L.



very bad and false, however; that *none* of all the Cures imaginable of him, and before Mr. Atterbury's death, I have, any thing from that Quarter, and he will be satisfied.

My Lords, it appears by the Account of Mr. Kelly, that this Day, that is their meeting, was not a Day for Mr. Kelly himself, but for Mr. Jones, a Day for a Day in denoted and is denoted by the following Name of *Jane*. So that it is the Evidence that has been given of this Day being denoted for the Bishop of Rochester is true, that it follows that Mr. Jones cannot be in this Letter of Kelly's denoted the Bishop of Rochester.

There is another Letter relating to this Day, E. 42: there is mentioned the Countess Mrs. Kingston was in great Fellowship, Mrs. Kingston is in great Fellowship for par. Harcourt, who is in a bad Way, being *stayed* by her Agony before it was thought well, however his Obligations to the Lady are as great as if he had come *just* which he defines you in her name.

My Lords, this shows that *Jane* and *Kingston* are the same Persons. It appears by the former Letter, that the Person was for Mr. Jones, and he should know of it, I am Letter *King*, that *King* is in great Fellowship, &c. *Kingston* has Obligations to the Lady are as great, &c. This is the first Part of the Letter of Mr. Kingston, in the latter Part it is in his Obligations to the Lady are as great as if he had come *just*, which he defines you in her name. That shows, that *Kingston* is the same Person as the former Letter, denoted by the Name of *Jane*, in this Letter, denoted by *Kingston*, and consequently *Jane* and *Kingston* are the same Person.

My Lords, the next Circumstance observable in these Letters, the interrupted correspondence between Mr. Kelly and his Friends abroad, in the Letter dated the 30th of April, 1722, E. 35. which says, Mrs. Jones did not work, and when the Days of *Atterbury* are over, he will, I hope, be fit for *Atterbury*.

My Lords, it has been given in Evidence, that the Bishop's Lady—his own Wife, as well as some, have given an Account, that the Bishop's Lady did the 30th of April: This Letter is dated the 30th of the same April, consequently this fact exactly with the Bishop's Circumstances as to his Lady being dead.

My Lords, that *Jane* and *Kingston* are the same, appears likewise by the Answer given in this Letter, dated the 20th of May, 1722, E. 43. which says, *Mrs. Chivers* gave you her best Service, and pray you will consider in his Name as the Death of Mrs. Kingston. My Lords, this Letter is in answer to that of the 30th of April, for it begins, *Town* of the 30th of April, which should have been in *left* *left*, it was in *left*, and this Letter concludes on the Death of Mrs. Kingston, and it is the letter of the 30th of April gave an Account that Mrs. Jones was dead. So that *Jane* and *Kingston* appear by these Letters to denote the same Person.

My Lords, these are Letters written by Correspondence concerned, one with another, on carrying on this Conspiracy. It is also been objected, on the behalf of my Lord Bishop of Rochester, that he is not concerned in writing of these Letters, nor did any of them come to his Hands, nor were they sent by his Direction, but that they passed between Mr. Kelly and his Correspondents abroad.

Your Lordships, we hope, will be of Opinion, in a Correspondence of this Nature, (which they show something to induce your Lordships to believe, that there had been a malicious Design in the Person between whom these Letters pass'd, to denote the Bishop of Rochester, in order to change him) that there are Facts, which amount to a certain Proof who the Person is that used to go by the Names of *Jane* and *Kingston*.

Your Lordships observe how the Matter stands: Mr. Jones and Kingston is a Person described, by the Letters of the 30th of April, to be in great Pain himself, to be in melancholy Circumstances in other Respects: He appears by the Evidence at that Time to have been ill of the Gout; his Lady appears to have been ill, and dying: Mrs. Jones and Mr. Kingston is a Person to whom a Day was lost, and it is apparent by the Evidence that this Day was denoted for the Bishop of Rochester. Mrs. Jones, in one Letter, is said, did not work; and in another Letter they conclude the Death of Mrs. Kingston: and it appears the Bishop's Lady died the Week before the 30th of April.

My Lords there are other Circumstances, which I should mention, in relation to the Times when the Bishop was in London, and when in the Country, which, we apprehend, is an additional Proof who was meant by the Names of *Jane* and *Kingston*. Therefore in Letter E. 41 a. Kelly says, Mr. Kingston is now in Town, and prays his best Service to you; he is ill of the Gout, and his Lady is by the Gout, and without his next may be sure of your best Service.

This Letter is dated the 7th of May; there it is said, Mr. Jones is now in Town: It appears, by the Examination of *Ward*, the Conclusion, that on the 7th of May my Lord Bishop of Rochester was in Town.

There is another Letter dated the 7th of May, 1722, directed to *Atterbury*, E. 42. which I beg leave to make some Observations on. Then it is said, *Lord the Favour of your*, which *Atterbury* is Mrs. Jones, who is now in Town only for a Day.

My Lords, this Letter shows, that the Person denoted by the Name of *Jane*, is now in Town. But they object, that this Letter cannot be said to show the Bishop of Rochester, because it appears, by the Declaration of *Ward*, that the Bishop of Rochester had in Town till the 10th of June, to conclude he did not come to Town only for a Day, and consequently that the Person meant in that Letter.

My Lords, so that it appears, that the fact concerning Mr. Jones appears in the Bishop of Rochester, of his being come to Town, is true; in the Letter being come to Town only for a Day, that is not Matter at Fact, but of the Apprehension of the Writer. He apprehended he was only come to Town for a Day, but it might be otherwise in that; and the Evidence has being come to Town is true, the Apprehension of the Writer with name said for a Day, is false. But we must submit it to your Lordships, in Apprehension of the Writer, is not sufficient to avoid the Truth of the Fact contained in that Letter, as we have proved that the first and last of *Atterbury* was in Town on the 7th of May when Mr. Jones is mentioned as being in Town in that Letter.

Another Letter dated Twelfth of May, 1722, E. 42. says, *Ward*, Mr. Jones, is in the City, and it is said, *Ward* he would be in Town on

Twelfth Night, when he shall be desired to join at a particular House, by a Card which may be about *Atterbury*; and the Twelfth following, that is, the day happened to be the 12th of May. Another Letter, E. 45. dated the 12th of May, 1722, says, Mr. Jones is still in the Country, but he has just *Ward* he would be in Town tomorrow. My Lords, upon the Examination of the Countess *Ward*, it duly appears, that the Bishop of Rochester, out of Town the 12th of May, out of Town the 12th of May, but he came to Town the 12th of May, which is the Day mentioned in the Letter that he had promised to come to Town. So that there are several Circumstances, all agreeing to prove that the Bishop of Rochester denoted by the Names of *Jane* and *Kingston*. My Lords, we must find it, that this is not probable, conjectured Evidence only, as has been objected.

These Letters contain Facts, and the Consequence from them is, *Jane* and *Kingston* is the Bishop of Rochester, in whom all these Facts agree. It is almost morally impossible, that all these Facts should be in the Case of any other Person, as they do in the Case of the Bishop of Rochester.

It has been argued, as to the Letters of the 20th of April, Was he only Person that was in London and melancholy Circumstances at that Time? A great many might be so. They go there the Particular has being in Town and in the Country, a great many Persons might be in Town and in the Country on those Days besides him. It is true, might be so. Was there nobody which Lady died the Week before the 30th of April, but the Bishop of Rochester? Certainly there were a many to whom that Circumstance may be applied. But, my Lords, the Circumstances together, they cannot all of them concur in the Case of any other Person, as they do in the Case of my Lord Bishop of Rochester.

It may not be improper here to take Notice of some other of the intercepted Letters, that have been given in Evidence to your Lordships, which mention the Names of *Jane* and *Kingston*.

In Mr. Kelly's Letters, giving an Account of his being taken up, on his Examination before the Council, he takes Notice of his being examined concerning the Persons that were recent by several *Atterbury* Names, and, among the rest, *Jane* and *Kingston*, who, he says, are *Atterbury* dead at. This is to give an Information to his Correspondents abroad that there had been a Discoverer, that the fictitious Names, concerning which he had been examined, were made use of as to their Correspondence.

My Lords, he comes afterwards and writes a Letter, after such Time as he was build'd (he was taken the 10th of April, and build'd the 17th June), wherein he says, It is absolutely necessary now, that there should be a new Book of Accounts; says he, they must up as to their present Book accounts, since they have been put Part, may have got the Whole.

My Lords, we humbly submit it, that having given an Account of his being examined concerning those several fictitious Names, after which he comes and says, it is absolutely necessary to have a new Book of Accounts, it is a plain warning of Kelly by this Letter, that the Names of *Atterbury* were the Names made use of in the Correspondence, and therefore he says, it is necessary to have a new Book of Accounts, in other Cyphers and fictitious Names, by which to carry on the Correspondence: He owns they have got Part, and fears they may have got the Whole.

From that Time the Names of *Jane* and *Kingston* are no more met with in the Correspondence that follows. We have gone no further in it: Evidence to fix any other Names to mean the Bishop of Rochester, but the Names of *Jane* and *Kingston*. But there are other Names, which in the Letters that follow, probably are design'd to mean the Bishop of Rochester, but they will be out of the Case, because we have given no Evidence concerning them; and the plain Reason why *Jane* and *Kingston* were not made use of any longer is, because it appears on the Examination of Mr. Kelly, that those Names were mentioned: therefore they were dropped by making use of those Names, the Correspondence might be discovered, and it might prejudice the Persons who sent by those fictitious Names.

My Lords, this is the Substance of the Letters sent to and from Mr. Kelly and his Correspondents, concerning the Person that goes by the Names of *Jane* and *Kingston*.

That my Lord Bishop of Rochester infalls, that he is not proved to be the Person concerned in writing these Letters, and that he had no Notice of them, and therefore they ought not to be laid up on Evidence against him; My Lords, we submit it to your Lordships, in a Correspondence of this Nature, when we pursue Facts and Circumstances, which stand, and arise from the intercepted Letters, which, when they come to apply together, are a plain Indication of the Person that is meant in them; when these Circumstances and Facts can fit one but the Bishop of Rochester, we hope, that it is not legal Evidence in *Atterbury*, *Ward*, or it is satisfactory Evidence to induce your Lordships to believe, and to conclude, that no Person can be denoted by these Names but the Bishop of Rochester.

My Lords, this is a Matter that the Bishop of Rochester could not tell all his Cures, be aware of: he makes Care that the Letters of the 10th of April are in Cyphers, and not write with his own Hand, fictitious Names are made use of, and he thinks he shall be sheltered by this Means from being found out to be the Person. The other Facts could not be so proved would come out to explain the Person.

But, my Lords, very often there is a Providence in denuding Things of this Nature, and where the greatest Caution and Care is used, Circumstances (that human Prudence could not guard against) are so found and continuing, that they discover great secret Correspondence, and place in power who is the Person carrying it on.

Some Texts of Scripture have been cited on the other Side. My Lords, I beg leave to say one on this Occasion; and that is, *Curse not the King, nor to thy Thought, for a Bird of the Air shall carry the Fable, and what hath Wings shall tell the Matter.*

In these unreasonable Conspiracies and Correspondences against the King and Government, (notwithstanding they are carried on so secretly)



that the Conspirators think nothing can discover them), there happens sometimes, thro' Providence, such Circumstances which the Persons cannot be aware of, that bring those things of Darkness to Light; and we hope the more we are concealed, that may deter any Person from going in the same way, and concealed Way to engage in any thing of this Nature.

My Lords, there is a Matter I shall beg leave to mention to your Lordships, by way of Lord Bishop having intimated as if I made hard and harsh Application of the Letter taken upon his Servant. My Lords, he says that Application I put upon that Letter was not a natural but an ill-natural Application. The Letter mentions an Impediment, and says the same in an Letter, if the Impediment cannot be taken, I am Perjur'd for ever and ever &c.

My Lords, I did deliver to your Lordships on that Examination in the Letter, that it seem'd to import a Sense of my Lord Bishop's Guilt, but that it was unavailing a Professor for some Years. My Lord Bishop says, this is by no means a natural, but a forc'd and ill-natural Application; for in that place he meant no more than, if an Impediment were lodged, it would not be professed, but made use of only that he might be discount a Professor for some Years.

My Lords, I must submit to your Lordships, which is the most genuine and natural Interpretation, that which I put upon the Words, or that which the Lord Bishop says. *Radyf* does, which is highly right as the sense and Justice of your Lordships and the House of Commons.

My Lords, I shall beg leave, in the next place, to take notice of the Evidence that hath been given on the behalf of my Lord Bishop of *Radyf*, and to consider, whether that is sufficient Evidence to fairly your Lordships of his Innocence.

My Lords, we did read the Examination of Mr. *Noyes*, one of his Examinations, and the last that was taken, they on the other side called it three other examinations, of which the last Examination, which we read, was an Affidavit; they read them all, and, my Lords, the Examination which we read was consistent with three other Examinations, with what my Lord Bishop of *Radyf* says; and I must own that the Charge, in the Examination of *Noyes*, upon my Lord Bishop of *Radyf*, is only taken from Kelly; that Mr. Kelly did tell *Noyes*, that the Bishop of *Radyf* had sent Correspondence with the Pretender and his Agents; and that he was charged by the Bishop in writing for him, and carrying on the said Correspondence; so far, my Lords, it is Hearily, what Mr. Kelly told Mr. *Noyes*, as to Mr. Kelly himself, it did affect him, by charging him that he had conspired to *Noyes*, that he did carry on such a Correspondence; but as to my Lord Bishop, it cannot affect him but in Hearily, and as to this, if there was nothing else in the Case but then, all the Arguments made use of against such Evidence would be of great Force.

My Lords, I can't say that this Charge from *Noyes*'s Examination is of Weight to charge the Bishop of *Radyf*, so as to condemn him. My Lords, they have urged that this Charge is not to be believed, all comes nothing; I tell, say they, is the Foundation, and if *Noyes*'s Examination is not sufficient to affect the Bishop of *Radyf*, then all the subsequent Evidence falls to the Ground.

I beg leave to observe first, that if we had not *Noyes*'s Examination, the Proof against my Lord Bishop of *Radyf* is as strong against it as it is, it is certainly Evidence of the Conspiracy in general, but as to the Bishop it is only a Circumstance, to show that another Man had had of the Bishop of *Radyf*, that he was carrying on a Conspiracy with the Pretender, &c.

But, My Lords, taking the Examination of *Noyes* out of the Case, and considering the other Evidence that is proved to your Lordships, there is a Question of *Noyes*'s Examination; whether *Noyes*'s Examination is true or true, is not material: I there is nothing to prove the Bishop of *Radyf* guilty, for they can't destroy the other Facts and Circumstances, and as long as they falsify, they prove the Bishop of *Radyf* as to the Facts concerned in carrying on this Correspondence.

My Lords, I beg leave to observe in *Noyes*'s Examination, there is something more than Hearily, there is a Fact in it, and we are able to support that Fact by other Evidence. *Noyes* says, that he hath gone several Times with Kelly to the Bishop of *Radyf*'s, and hath did a considerable Time for him. My Lords, we shall give by another Witness, that *Noyes* about that Time came several Times to a House, where he had been used for a Friend of his that was gone to the Bishop of *Radyf*'s, and he had and waited for him three or four Times, for an Hour, and an Hour and an half together. This will confirm what *Noyes* said in the respect to be true.

They say there are several Improbabilities contained in *Noyes*'s Examination, and inconsistencies, as to the Improbabilities, some of them are answered as if there was great Weight in them. That is much insisted on by my Lord Bishop himself is, that *Noyes* says, he was employed to write Memorials, and the last he wrote was in *December*, and that was to the King of *France* to furnish a Body of 5000 Men, so come and strike these Kingdoms: The Observation made by the Bishop of *Radyf* is, Where are these Memorials? Why did he not keep Copies of them? He was at that Time concerned in a Design to force himself one way or other, if he delayed to betray these Persons he corresponded with, it would have been of Service to have kept those Memorials, to have delivered them to the Government: If, on the other side, he had kept to his friends, it would have been proper to have kept them, in order to cause a Confidence in him, and to show the Part he had in the Conspiracy. These Observations can have no Weight, when your Lordships come to consider this was in *December*, and there was never any Application by him to make any Discovery of this Conspiracy till July following. As to the Service it might be to keep them with respect to his Party, my Lords, we have already apprehended that, considering him as a Man engaged in a Conspiracy of this kind, a Memorial of this Nature drawn up by him is so far from being, that to detect himself and injure his Party, if he had not to be taken up, and such a Memorial drawn upon him; therefore it was necessary to destroy it.

My Lords, there is another thing mentioned in the Evidence to *Payles*, and the Improbability of his being the Earl *Marshall*; but *Noyes* does not say that he was the Earl *Marshall*, but says, I then saw one *Henry Wolfe*, which he took to be a *Religious* Name, and does not know who he really was, but he took him to be the Earl *Marshall*, and he gave him the Heads to draw up these Memorials.

My Lords, we apprehend it is not material who *Wolfe* was; he is a Person that employed *Noyes* to write these Memorials, and he might be the Earl *Marshall*: *Noyes* says he took him to be so. Say they, if it was the Earl *Marshall* why should he be the several Nights with *Noyes*? This, say they, is very improbable. If it was him, he was to conceal himself, and take the first Place for that Purpose; therefore conversing with *Noyes*, and not owning himself who he was, is not improbable. It is probable he would not discover himself to every Person; and the *Noyes* was a Person engaged in the Conspiracy, if *Noyes* did not know him to be the Earl *Marshall*, it might not be proper for him to discover himself to *Noyes*.

My Lords, I think there are the principal Things objected; there are some other little Matters, but I think dwelling on such Objections as these, is but respecting your Lordships Time.

My Lords, that which we humbly insist upon is, Whether *Noyes*'s Examination is an Examination to be credited or not credited. We agree it is only Hearily as to the Bishop of *Radyf*, and if we had not other Matter, it would not be sufficient; but that we humbly apprehend its being true or false need not affect this Case. If your Lordships are of Opinion 'tis false, there is sufficient Evidence against the Bishop of *Radyf* without it.

My Lords, in the next Place, they have produced in Evidence several Persons that come and give your Lordships an Account of *Noyes*'s Confessions to them. There is one Mr. *Rugby*, Mr. *Stewart* and Mr. *Stewart*, and two other Persons, that give an Account of what Mr. *Stewart* and *Stewart* had told them *Noyes* had said.

*Rugby* by his Evidence would have it believed, that *Noyes* had told him, he was employed by some Person as *Power*, to do several things upon several Persons that they were innocent of; that he had had several things that were false, and had imposed upon a great Man he had made Application to, and had got great Sums of Money out of him.

My Lords, I don't know how far they would carry this, for by what hath been insisted upon by my Lord Bishop of *Radyf*, and his Counsel, it should seem as if they were labouring to show from these Persons that they have said to be accounts, that all the Letters relating to this Correspondence, the Letters of the 20th of April, and subsequent Letters, that relate to the particular Facts that denote *Trent* and *Stewart* to be my Lord Bishop of *Radyf*, were composed between *Noyes* and some other Persons, in order to charge my Lord Bishop of *Radyf* with being concerned in this Conspiracy. This seems to be what they are labouring at by this Evidence.

My Lords, as to *Noyes*'s being a Person employed in writing these Letters of the 20th of April, or any subsequent Letters, in manner as is suggested, we shall show your Lordships that 'tis impossible to be true; we shall show that the Letters of the 20th of April, and all the other Letters that mention the Facts which denote the Bishop of *Radyf*, were all intercepted and in the Hands of the Government, before such Time as it was known among the Ministry that there was such a Person as *Noyes*; for *Noyes* made Application to the honourable Person mentioned by their Witnesses, subsequent to all this Correspondence, when these Letters were in the Hands of the Government, as a Person that could make Discoveries to the Government. Therefore that Indication must vanish, that *Noyes* was employed to forge Letters, which contain Facts under the Names of *Trent* and *Stewart*, to charge the Bishop of *Radyf*; and that even those Letters of the 20th of April were forged by him.

My Lords, we shall go into the Character of Mr. *Rugby*, who hath, at your Lordships Bar, owned, that he hath been whipt, pillor'd, and imprisoned; and as he hath taken his Degree, as he owned at your Lordships Bar, consequently he hath taken the Oath.

As to the Character of Mr. *Stewart*, he hath likewise been produced as a Witness, and he carries the Evidence further than the Evidence of Mr. *Rugby*, for whereas Mr. *Rugby* says, that *Noyes* confessed he had imposed upon that Honourable Person, and had mentioned things that were false, yet he could not say that after the Time of his Examination, after *Noyes* was brought from *Dress* to *Trent*, he had said it to him that what he said on those Examinations was false. But *Stewart* says, that after his Examination he owned that they were false. I be left Examination was the 20th of September, and that he was drawn that Night, but as to the Examination before the 20th of September, and out of which that is collected, Mr. *Stewart* says, *Noyes* said to him that they were false.

My Lords, as to Mr. *Stewart*, we shall draw what sort of a Man he is, a Man attained of High Treason; and tho' he is pardoned as to his having his Life and Liberty from him, he is in all respects an attainted Person: He was tried and condemned in the County of *Surrey* for being concerned in the *Protestant* Rebellion, and consequently a Man of no Credit. And as to what he and *Stewart* owned, relating to a Conversation with *Noyes*, when in *Culby*, we shall show they never were together after the first Night, when they sup'd together. He was asked, whether it was the first Night that he had this Conversation with *Noyes*, and he did not pretend he had any Conversation of this Nature with *Noyes* the first Night, and if it was not the first Night, we shall show it could not be afterwards, for *Noyes* was kept in a Room by himself, *Stewart* and *Stewart* by themselves in a Room underneath; and therefore this seems to be a Story contrived between *Stewart* and *Stewart*.

We shall show it could not be possible, for them to converse together, for *Stewart* and *Stewart* were locked up in three Rooms; *Noyes* was locked up in his Room separate and apart from them, in that they could never have any Conversation with him, nor come near him.

Another thing is shown by one of them, *Stewart* a *Message* sent to him by *Noyes*, and a Paper, which they were in Custody of the *Black* *Room*, and



and he says, this Paper was brought to him by the Messenger's Maid from *Nyssa*, and that this Paper contain'd a justification of my Lord *Orery*, expressing that he knew nothing of my Lord *Orery*, but what he had said of him was utterly false; that the Messenger finding he had some Paper, he, to conceal this Paper, burnt it. But that the Maid came to him with such a Message or Paper as false; the Maid never did, nor did the Messenger know of the Paper, as we shall prove to your Lordships.

My Lords, when we have proved this, we humbly apprehend we have taken off any Credit that could be given to what these People have said, if they have said anything material. My Lords, before I leave this Head, I beg leave to observe another thing as to *Stone*. He, upon his Examination concerning a Diffusite with *Pamper*, denies it entirely; but says, that what *Pamper* hath inform'd in relation to him, is false. We shall call *Pamper*, who will inform your Lordships, that *Stone* hath own'd that he was privy to this Conspiracy, and knew who were concern'd in it.

I own there are several noble Persons named to be concern'd; that there is no Reason to say, from what *Stone* may have said of them, that they are guilty: But such as he may have said the Names of great Persons design'dly, to keep up the Spirit of their Party, by telling them such and such Persons were concern'd; and if there is no other Evidence but what such a Person hath said, the noble Persons mentioned will not be affected by it.

My Lords, there is another Head I shall beg leave to mention, and what they have insisted upon under this Supposition, that they would have it taken that there was a Design to forge Letters, in order to charge my Lord Bishop of *Rockley*, and several other Persons. Say they, it was easy to get information of such Circumstances relating to the Bishop and his Family as we mentioned in the intercepted Letters, and then to write such Letters with a Design fully to charge the Bishop with having been concern'd in carrying on a treasonable Correspondence. Your Lordships will please to consider who this Charge must fall upon, of forging the Letters of the 20th of April, or the Letters that these *Jones* and *Widdow* to be the Bishop of *Rockley*.

My Lords, we have proved them all to be Mr. *Kelly*'s own Hand-writing, or Letters that have come in Answer to them. They have objected we have not given sufficient Proof of *Kelly*'s Hand: Say they, it is proved by Clauses of the Public-Office, who never had compar'd one original Letter with another; but at last they stop an original Letter, dated the 20th of *August*, after the Correspondence had been carried on several Months; and then come and swear that the original Letters, that were forwarded, were of the same Hand-writing with that of the 20th of *August*. Can this be looked upon as sufficient Proof? But we submit it, their Evidence is much stronger than if they had only compar'd one Letter with another, for they not only had these Letters come every Week, but they were employ'd every time these Letters came, to copy them; so that the Hand-writing of these Letters must, by the constant copying of these Letters, and their copies of them, be so impregnated in their Memory, that they are much truer Judges of the Hand, than if they had two of these Letters to make better compare them together. And the Hand-writing was so well known to them, that they could, as they have inform'd your Lordships, when any of these Letters came, distinguish them by the Hand-writing of the Superscription, before they had open'd them, and they never were mistaken. And that, we humbly apprehend it as satisfactory Evidence as can be given, that these Letters were the Hand-writing of Mr. *Kelly*, provided the Letter of the 20th of *August*, which I shall take Notice of by and by, is sufficiently proved to be of his Hand-writing.

Taking it then, my Lords, that these Letters are the Hand-writing of Mr. *Kelly*, and of his Correspondence in answer to them, I don't find that my Lord Bishop of *Rockley* hath charged Mr. *Kelly* with having any Malice to him. And if he had no Malice to the Bishop of *Rockley*, what should induce him to write these Letters, on purpose to charge the Bishop of *Rockley* with being concern'd in this Conspiracy?

My Lords, we humbly apprehend the Presence of these Letters being *Kelly*'s, must influence, that *Kelly*, a vile Fellow, intending to charge the Bishop of *Rockley* with being concern'd in this Conspiracy, and make him liable to forfeit every thing that was dear to him, both contrived Letters containing Circumstances in order to fix him to be the Person denoted by the Names of *Jones* and *Widdow*, he hath written Letters, and by Combination procur'd others in answer to them, for this Purpose: and by these wicked and malicious Practices, hath furnish'd this Evidence against the Bishop, who is an innocent Man.

My Lords, this is the Substance of the Defence on this Head; and whether your Lordships will believe this, we must submit to your Lordships. Your Lordships have had *Kelly* before you, and by his Bishop you have had no Reason to think that he had any Malice against my Lord Bishop of *Rockley*, or any Design or Intention to prejudice him.

My Lords, the next Part of the Evidence I shall beg leave to observe, is a Pact very considerable, and is so far from being a Defence, that the Defence attempted, hath confirm'd and strengthen'd the Evidence against my Lord Bishop of *Rockley*; that is, with relation to the Letter taken among my Lord Bishop's Papers, directed to *Dublin*; a Letter which, they observe, don't contain any Treason, or is of any treasonable Import; but it seems to be a Letter of Indifference, and, I believe, as such, it was not taken care to be destroy'd, as it would have been, had there been any Apprehension that it would have been made of it, as now, against the Bishop of *Rockley*.

My Lords, the Use we make of it, is, that that Mr. *Jablon*, or Mr. *Kelly*, was a Person employ'd by my Lord Bishop of *Rockley* in writing Letters for him. My Lords, your Lordships will observe by the Letter, before says, I have borrow'd nothing from you for the Letter I had about two Months ago by Mr. *Jablon*, to which I immediately in my Hand return'd my Answer.

My Lords, if this is the Bishop of *Rockley*'s Letter, either in his own Hand, or his Letter writ by another Person, it plainly proves what

we infer from it, that *Jablon*, i. e. *Kelly*, writ for the Bishop. Your Lordships will observe, it is a Letter writ in a Hand which no man was a skill Hand almost like Print; and it is plain that it is writ in diverse Hand of the Writer, whoever he was. At the latter End of the Letter, when the Persons that were to be used and off of his Guard, are several Letters which, compar'd with the Writing of my Lord Bishop of *Rockley*, and what is own'd to be his, appear to be his writing, the Date of the Letter, which is *Dublin*, the D you frequently find in the Bishop's Hand-writing; your Lordships observe the Letter has frequently occurs in the Bishop's writing; and your Lordships, by paring that with the Letter produced, will find that they agree.

Whether or no your Lordships won't think it, on those Circumstances to be the writing of my Lord Bishop of *Rockley* in a disguised Hand, must submit to your Lordships. But, my Lords, suppose it was not Hand-writing, here is Evidence that it was his Letter; and that is, first, because it is under his Seal, it is sealed with his own Seal, as then he had in his Custody, and made Use of no longer ago than the end of February 1711: I think that it is the Day a Letter was taken from his Post. That, we humbly apprehend, my Lords, will plainly prove the Bishop's Letter, because it was sealed with his Seal, and the Seal is made Use of by the Bishop, on the Letter that was taken upon his Post in February last.

My Lords, this Matter hath been controverted by my Lord Bishop. He hath call'd Engravers, who believe Seals may be counterfeit'd, and Impressions may be taken off the Wax, and another Impression may be made it difficult to know which is which. They were a great deal in answering the Question, Whether or not, if the Seal, where the Impression was to be taken, was broken in the Middle, it could be done? But one said, the Seal might be mended, and it might pass unobserved; but I find it is extremely difficult. But they did not think it could be counterfeit'd, that it may be difficult to discover from the other. My Lords, this is to insinuate, that after such Proof as the Letter was taken upon my Lord Bishop's Seal, the Person in whose Custody this other Letter of *Dublin* was (which is now'd to have been taken the 24th of *April*, amongst the Bishop's Papers), hath counterfeit'd the Seal, to take off the Seal with which the Letter to *Dublin* was sealed, (the Wax broken in two as it was) in order to fix it upon the Letter that was taken upon my Lord Bishop's Seal, so as to grove the Letter to be the Bishop's Letter. Who is this to be said now'd to have been the Bishop's Letter? I don't know, unless upon the Committee of the House of Commons: for the Bishop's Letter was taken on his Seal on the 20th of February; the Committee of the House of Commons made the Report on the 11th of *March*, and the Letter to *Dublin* last, being taken the 20th of February, been in Custody of that Committee. And while this Letter is in Custody of a Committee of the House of Commons, an Impression to be taken off the Seal, or an Impression taken off a broken Seal, and put on the other Letter, in order to show that these are Letters of the same Person. Who can believe this to be the Case?

An Observation hath been made, that truly the Committee of the House of Commons have not made any Observation of this Kind, we submit to the Letter to *Dublin*, that it is the Bishop's Letter; which is true; for they had not this Matter relating to the Identity of the Seal under their Consideration; but this is a new Discovery made since: And therefore, my Lords, they apprehend that this was a Letter directed to the Bishop by the Name of *Dublin*, it being found amongst his Papers, nothing to the contrary did appear, all after they had made the Report.

My Lords, there are other Things your Lordships would have expected to have had an Account of, in answer to this Evidence. Here is a Letter taken among my Lord Bishop's Papers; consequently, so far we apprehend that this Evidence is a legal Evidence against the Bishop, being a Letter found in his Custody; that Letter is directed to *Dublin*, and mentions the Bishop of *Rockley*. Does my Lord Bishop of *Rockley* give an Account why *Dublin* is not who *Jablon* is? how this Letter came there? No, my Lords, none at all. Dath his Lordship give you any Account of the Seal? and hath his Lordship said that the Seal, that sealed the Letter taken on his Seal, he hath not; or that the Letter was not sealed with his Seal, or that he did not seal it himself? His Lordship did not say one Word to that Purpose, or make any Denial of the Matter, nor give you any Account any Account who *Dublin* and *Jablon* were; nothing at all, but hath left to your Lordships on that Foot: That the Letter to *Dublin* had an Impression taken off, after it was in the Custody of the Committee of the House of Commons, and that Impression made use of on the other Letter; and that this is another Part of the Controversy, in order to charge my Lord Bishop of *Rockley* with being concern'd in this Conspiracy.

My Lords, as to the Seal's being the same on the two Letters, we humbly apprehend, the Evidence given on the other Side hath brought out. We have produced two Engravers, one of them they own to be the true Engraver of England, Mr. *Christians*; he gave your Lordships an Account, that he verily believed that two Impressions to be taken from the same Seal. Mr. *Rafin* said the same thing, and that he had used the Art lost, and could judge. They made no Endeavour on the other Side to try the Skill of Mr. *Christians*; but as to Mr. *Rafin*, they expect they should be able to puzzle him; and therefore have produced six several Impressions made on Wax by Seals to try his Art; and after he had look'd upon them, he gives you such an Account, that I believe, your Lordships are satisfy'd that he is a Man of Skill and Art; and that these Impressions had been taken off, as they would influence they were, he must have discover'd it.

My Lords, here is an Artificer brought to make this Experiment on *Rockley* to try his Skill; yet, notwithstanding all the Art hath been made use of in the Case, that could be, the Man was able not only to distinguish but many Seals the Impressions were made with, but also to give an Account that they were call Seal, and not gray'd Seal, that made their Impressions.







he intemperately with him, and their Dispute was only about Matters of Speculation.

He doubt not your Lordship hath conversed with Persons on different Subjects to whom he would communicate nothing of an Office of this Nature.

Lords, upon the whole Matter we must submit it to your Lordships, whether we have not made out the Charge against my Lord Bishop of Rochester to your Lordships Satisfaction; if not by legal Evidence, yet by Evidence that will satisfy and convince any Person that will consider it. My Lords, a great deal of Regard is due to the Character and Function of the Reverend Prelate at the Bar: but if my Lord Bishop of Rochester, hath departed from his Character and Function, and hath gone and engaged in a traitorous Conspiracy, and been guilty of Treason towards his King, and injury towards his God, we humbly apprehend, if this be proved, that his Character and Function are so far from being a Mitigation, that they are a great Aggravation of his Crime.

I shall submit it to your Lordships, to do what your Lordships think is consistent with Justice and Equity.

[Mr. Henry Sacheverell next.]

My Lords,

It must be admitted, that the Reverend Prelate at the Bar has made his Defence with the utmost Force and Beauty of Eloquence. Was I capable of answering it as in the like manner, which I own I am not, yet I should not think myself at liberty to do it, under the present Circumstances.

For tho' it may be evolvable, in a Person upon his Defence, to make use of that powerful Influence of Error and Deceit, which always insinuates upon the Reason, and misleads the Judgment in proportion as it affects the Passion; yet I can't think the same Methods judicious in a Person employ'd to carry on the Prosecution.

I shall therefore examine the Force of what has been offered on behalf of the Reverend Prelate, Bishop of the Ornaments and Colours of Resistance.

I shall, in the first place, consider that Catalogue of Hardships, which his Lordship has complain'd of.

1. The first Complaint was that of Severities and Indignities offer'd him during his Confinement; but the Subject of this Complaint not arising from any of the Proceedings before your Lordships, I can give it no other Answer, than by saying, that I am very credibly inform'd 'tis a Complaint without Foundation.

2. Reading Extracts of Letters was the next Hardship complain'd of by his Lordship, and repeated as they were as Evidence against him; when it was declared by the Council for the Bill, that they were only read upon the general Part of the Bill, and did not affect his Lordship.

3. The third Hardship was, accusing the Decyphers from answering such Questions propounded by his Lordship, as tended to a Discovery of their Art; that is, in other Words, refusing to doan All which must prejudice another Person, and could be of no Service to his Lordship; I can give it no other Answer, than by saying, that I am very credibly inform'd 'tis a Complaint without Foundation.

4. The next Hardship is of the like nature, the not suffering the Clerks of the Post-Office to be examin'd, as to the Method and Authority by which they open'd Letters, by which they might have been subjected to the severe Penalties of the Statute of *James*, if they had not exactly pursued the Methods prescribed by that Statute. But his Lordship's Innocence could not possibly have been manifest by it; for are the Letters less criminal, if the Persons who open'd them did not punctually pursue the Directions of that Statute? It would be thought a strange Defence in a common Offender, if, instead of proving his Innocence at his Trial, he should object that he was taken without a proper Warrant; which, if true, don't make him the less criminal.

5. The fifth Hardship was refusing to let Mr. Lewis declare any thing that came to his Knowledge by his being employ'd in the Secretaries Office some Years ago. This Hardship could be added only to fill up the Catalogue of Complaints, since, notwithstanding your Lordships Order, Mr. Lewis did declare what he was call'd for, tho' he afterwards own'd, that he came to the Knowledge of it by being employ'd in that Office.

6. The sixth Hardship was in reading an Examination not dated, sign'd, or sworn. But I apprehend the Counsel for the Bill have more reason to complain of Hardships of this sort, in reading Papers on behalf of his Lordship as Examination sign'd and sworn, without ever proving that they were sign'd or sworn to, or that any such Persons were ever examin'd; whereas the Examination being in in the Bishop's Complaint, was read as an Examination, or rather Confession of a Person since dated, not sign'd nor sworn to, and fairly left to your Lordships, to have such Weight as the nature of the Evidence deserved.

7. The next Hardship was, that of reading Letters wrote by another Person, without Proof that they were wrote with the Prince's Privy, is begging the Question upon the whole Proceeding. For whether there was Proof of their being wrote with his Privy or not, is the Subject of the present Enquiry.

8. 9. The two last Hardships complain'd of, seem to be calculated for Persons without Doors, who are Strangers to what pass'd at your Lordships Bar, that he was deny'd a Copy of the Letters in Cypher, until the Trial was so far advanced that he could not make the proper use of those Copies. Well any one who reads this Complaint in his Lordship's Speech might, that after he had a Copy of these Letters, he had twice as much time for his Decyphers to peruse them as he himself desired.

Or will a Person who shall read the next Complaint in his Lordship's Speech, that he will refuse to read any of the Papers contain'd in the Trunk that had not been read by the Council for the Bill, ever be persuaded that his Lordship read the three first Examinations of *Nogues*, that had not been read by the Council, the Papers taken in *Nogues's* Pocket, the Certificate of the Surgeon return'd by Mr. *Comford*, neither of which had been read by the Council for the Bill; that his Lordship was express-

ly told, he was at Liberty to read any Paper in the Trunk he should think necessary to his Defence; and was only refused reading one Paper, because he own'd it was for no other purpose but to raise an Objection to a Matter which had not been insisted on by the Council for the Bill, or he might answer the Objection which he himself should raise.

These things will seem incredible to one who shall read this Catalogue of Complaints in his Lordship's Speech; and yet these are some of the Complaints, which, with the Assistance of a warm and malicious Audience, Tears from some of your Lordships Eyes:—

But when *Dr. Hurd* of that false Beauty, and examined by the force of unerring Rules of Reason, appear to be without Foundation, and so have been made without that first Regard to Truth, which, I presume by some Part of his Lordship's speech, he would be thought always to have.

From these Complaints his Lordship proceeds to support some of Objections taken by his Counsel to the Bill.

And one of the first Objections is of the same nature with some of Hardships that have been complain'd of; that is, it might be an Objection, did it not want the Foundation of Truth.

The Objection I mean is, that it is a Bill *ex post facto*: Your Lordships have heard a great deal said upon the Hardships of Bills *ex post facto*.

We have been call'd upon to show against what Law he has offend'd; it has been said, if he has not offend'd against any Law, will you make Law in his Case, which will not be a Law in the Case of any other Man? This is a surprising Objection.

The Nation I always had of a Law *ex post facto* was, where a Fact was made criminal by a Law, which was not so at the time that Fact was committed.

But is that the present Case? Was it no Offence, before this Bill was brought in, to correspond with the Premier and his Agents, in order to subvert our Constitution?

Are we to be call'd upon to show against what Law this is an Offence? Or to have a Complaint made, that in punishing a Man for such an Offence, you are making a Law in his Case, that will not be a Law in the Case of any other Person?

I hope it will be a Law in the Case of every Man that equally deserves it.

But his Lordship is sensible of this Answer, and therefore gives it a very artificial Turn, by applying it, not to the Fact, but to the Evidence. His Lordship seems to argue, that accumulative Evidence is as unsatisfactory as accumulative Testimony, and objects that Posits which counteract Light and Strength to each other, have only the Formality, without the Force of Evidence.

This Objection is defective of all Proof that is not Mathematical, for all other Proof must necessarily be what he calls accumulative.

That is, it consists of a variety of Facts and Circumstances laid together, sufficient to induce a Belief, who any of them singly would not do. This is the very Principle upon which the Trial of every Material Fact, not capable of a Demonstration, does and must proceed.

Your Lordships, in the next place, have heard a string of Objections that have been repeated against each of the Bills.

That a Subject of England ought to be tried according to the Laws of England and *Magna Charta*:

To be convicted by legal Evidence:

And that Discrepancies between legal and parliamentary Evidence is absurd.

All these Positions I agree to.

But at the same time I must affirm, that this is a Trial agreeable to the Laws of England and *Magna Charta*; and that a Proceeding of this Nature is as necessary a Part of our Constitution, as the Establishment of the ordinary Courts in *Windsor Hill*.

The Difference between parliamentary and legal Evidence, taken in the general Sense of the Word, Legal, is improper.

And I affirm the Evidence, which has been offered in support of this Bill, is legal Evidence.

What is legal Evidence, depends upon the Nature of the Inquiry, and the Jurisdiction before which the Inquiry is made.

Depositions in writing are not legal Evidence in a Court of Law, but they are legal Evidence in a Court of Equity.

Upon an Indictment for Felony, or any other Misdemeanour, one single positive Witness, or Circumstances only without any positive Witness in the Fact, is legal Evidence.

But upon an Indictment for Treason, the Law requiring two Witnesses in the Courts below, one Witness, or Circumstances, is not legal Evidence in parliamentary Enquiries, which are excepted out of that Act; and is not relaxed by any other, every thing is legal Evidence which may properly tend to a Discovery of the Truth.

I can't think myself at liberty, at this time of Day, to mention what fell from the other side, against the Power of the Parliament in general, and the rather, because the next Objection which they relied upon was intermeddled with an admission of that Power.

But they say it ought never to be exercised but in Cases of Necessity, and influence particularly in the Bill against the South Sea Directors, in the Case of that Nature. Is there any Comparison between the Offences of those Men, and of one who has endeavour'd to subvert our whole Constitution, to destroy our Religion, our Liberty, and every thing that is valuable?

When we reflect that these Endeavours have been constantly carrying on ever since the happy Establishment of the Protestant Succession:

That the many Discoveries of these Plots, the many Examples of publick Justice, have had no other Effect, than to make them more subtle and cunning how to avoid the common Form of the Law:

These Reflections show the Necessity of such a Proceeding, to secure the World, according to your Lordships Report, that as Artifice and Disguise don't hide the Danger to the Publick, nor mitigate the Guilt of the Offender, is neither right they to proceed him from Parliament.

The next Objection was address'd chiefly to one Part of your Lordships, who were told that no civil Power upon Earth could deprive a Bishop of the Exercise of his holy Function, but that must be done by another Judicature; and therefore it was object'd by one of the Council, that whereas



whether this is join'd in the Common Law Courts, whether Bishop or the Court whose fact this is depending, must write to the Metropolitan, & try it, according to the Law of the Church.

Whether an Act of Parliament can depose a Bishop, so as to make the Act of the Bishop afterwards invalid, is a Contrivance not proper at this time, but it will be admitted on all hands, that an Act of Parliament may depose a Bishop from the Exercise of his Function within any Part of this Kingdom, so as to make the Exercise of it Criminal in him, or in any other who shall him. And I believe if this Bill should pass into a Law, there should be a Question, whether his Lordship was afterwards Bishop of Rochester? the Courts of Law, upon producing the Act of Parliament, would hardly think it necessary to trouble the Metropolitan.

His Lordship has been pleas'd to say, that this is the full Influence which a Member of this House has been judg'd in another.

I am sure that his Lordship, who is to give a Matter of our English Constitution, should have forgot the Case of one of his Predecessors in the See of Rochester, in the Reign of Henry VIII. against whom a Bill was brought in the House of Commons, inflicting severe Pains and Penalties, which pass'd in that House, and afterwards received the Approbation of the King the Royal Assent.

They have also their Objections to the Bill, with a very pathetic Advertisement against the Consequences of it.

They say the worst Man can't foresee, nor the most innocent Man deliver himself from the Consequences of this Bill.

That a wise Man should not be able to foresee what will happen hereafter is not very strange.

But he must be a very wise Man indeed, in my poor Opinion, who can foresee any danger to Innocence from the Proceedings upon this Bill. Your Lordships have attended with the utmost Patience, for seven Days together, to the Proceeds for and against this Bill, and have given the House a full and complete Answer, afforded him all the Assistance possible to make out his Innocence.

And whoever shall use this Proceed as a handle for Oppression and Injustice, must certainly be guilty of the same Oppression and Injustice as those who precede.

This is at Part of their Defence consist'd in Observations upon the Evidence for the Bill.

They rule great Triumph from *Noggs's* Examination, which they would represent as the Foundation of the whole Charge, or offered as such by the Council for the Bill.

But if it was, they have been so far from weakening, that they have shew'd strength to that Foundation.

As to the Innocence in it, they are not *Noggs's*, but *Kelly's*. As to the Tale they have told, that at the very Time when he was deciding a great Man with Confessions, either to get Money out of him, or to find an opportunity of making his Escape, he should declare to *Blount* and to *Stewart* that what he had confessed was false; I say, as this is improbable in itself, so it appears by our Evidence to be a mere Fiction of their own, without any Possibility of being true.

It appears to be an Attempt, by a parcel of desperate People engaged in the same Interest, to weaken *Noggs's* Evidence, when they looked upon as a Betrayer of the Cause and Party.

From the Evidence of *Noggs* they proceed to the other Evidence.

And here they tell your Lordships that we have supported the Bill by *unreasonable*, *arbitrary* and *invidious* Interpretations, that when a Woman is named, it means a Man; that two different Names signify the same Person; that Books of Accounts, and mercantile Terms, by a new kind of Metaphor, are taken in an ill Sense; and all this stuff'd with the Whories and Conjectures of Decipherers.

These are pretty sounding Expressions; but, when consider'd, are nothing but Sound.

As to an arbitrary Interpretation, when a Letter says, I saw *Mr. Algernon Kelly* in great Tribulation for poor *Harlowe*, his Obligation is to the fact, which he deposes may be made known, to apply this to a Man, when two Letters are written by the same Person, but sign'd by different Names, to apply those two Names to that Person?

When Letters give a Caution not to write any more, till new Books of Accounts can be sent and sent over by safe Hands; because those who have got Part may by the same means have got the whole.

To express a doubt whether they have been betray'd by false Friends, is upon the Enemy.

To talk of having Wine, but wanting Barrels: of the Absence of the King and Court, as shewing a proper Opportunity of sending over and taking their Wine?

A Man must have laid aside his Reason, that can think this the Language of Persons really desiring in a mercantile way: 'Tis the plain and Common Cast of a treasonable Conspiracy.

They next object to the unreasonable of applying the Circumstances which relate to *John* and *Algernon* to the Bishop of Rochester.

Was Nobody else besides the Bishop out of Town? Was he the only Man that had the Goods, or who sold his Lady at that time?

Were these Questions to be asked singly, they might be answer'd, but there were other Persons in the like Circumstances.

But then the Answers would be nothing to the Purpose.

The only Question applicable to the present Case would be, Is there another Person who was in Town on the seventh of *May*, out of Town on the tenth and fourteenth, in Town on the fifteenth; whose Wife was the Week before the thirtieth of *April*, he himself then all of the Court, to whom a Dog was sent from France of the name of *Harlowe*, the Broker his Legs, and was brought to Mrs. *Barnes*, by Mr. *Kelly*, in order to be cured?

These are the Circumstances of *John* and *Algernon*, and they are every body's Truth, but the Bishop of Rochester and I believe your Lordships can hardly think they are so of any other Person.

They said they should falsify several of these Facts; but they have not.

In the Papers they have produc'd from the Surgeon concerning the Dog, he considers himself.

In the bill he says, he gave Mr. *Kelly* a Dog for his own use, to dispose of as he pleas'd.

In the second he says, he gave it for Mrs. *Barnes*.

But Mrs. *Barnes* tells you, that the Dog deign'd her the Bishop was in her Cathedral, when the other, when by the Surgeon was expell'd out.

Their Attempts to disprove the Circumstances of being in Town, has not with a little Success.

In a Letter of the seventh of *May*, 'tis said Mr. *Algernon* is come to Town for a Day only.

We demand that the Bishop was in Town upon that Day; they answer us by saying, he was in Town two Days after.

Does this dispute, by being in Town upon the seventh or does it weaken the Proof of his being then in Town, because he alter'd his mind, and staid two Days longer than perhaps he at first intend'd?

This is the only Attempt they made to disprove any of the Circumstances relating to Mr. *John* and *Algernon*. As to the other Instances which they pretend to disprove, they relate to *Wigton* and *Rig*, and were not mentioned by the Council for the Bill.

They next object to the Method of proving the Remittance of Hands, and observe, that the original Letter prov'd to be Mr. *Kelly's*, and the three Letters applied to the Bishop of Rochester, are dated at four Months distance; and how is it possible, that the Clerks of the Post-Office should be able to swear upon their Oaths that they are of the same Hand-writing?

This is not a fair Representation of the Evidence: For the Clerks told your Lordships that there was not any one Post, during all that time, which did not bring some Letter in the same Hand, all which they copied, and had by that means contriv'd a perfect idea of the Hand; so that they did not swear from Memory, but from a Knowledge gain'd by Experience, and many constant repeated Observations upon the same Hand.

There have been here other Objections made, that are scarce worth taking notice of.

'Tis said Mr. *Algernon* is in great Tribulation for poor *Harlowe*, which *Kelly* could never say of the Bishop of Rochester.

Surely then, is nothing in this.

'Tis an Expression that might be said of a Man of the gravest Character in a Letter of this sort, to the Author of such a Pretext.

Mrs. *Algernon* is mentioned eleven Days after the Bishop's Lady was dead. 'Tis the Instance where 'tis said Mrs. *Algernon* is in great Tribulation for poor *Harlowe*, but the Obligation is the same, which by defects may be made known.

That *John* is mentioned in other Cyphers for other Persons, as in one for the Duke of *Norfolk*, is *Phoenix's* for a different Person.

But does it therefore follow that an *Kelly's* he can't mean the Bishop of Rochester?

It certainly does not.

And they seem to be convinced that the Bishop is too well described in this Correspondence, under the Names of *John* and *Algernon*, to doubt whether he is meant by them.

And therefore they endeavour to give it another Turn, by saying this may be a malicious contrivance of some Persons, who have inform'd themselves of his Lordship's Motions, and the Circumstances of himself and Family: And to make this the more probable, they say that *John* and *Algernon* are the only Persons mentioned as this Correspondence of Mr. *Kelly's*, with Circumstances of the Nature.

One would not imagine the Persons who made this Objection, had so often heard the Letters read.

E. 41. 'Tis said, Here is laid up with his old *Dijon*, Hobbs is pretty well recover'd.

E. 45. Mr. *Hore* is laid up, and is in *Jerusalem*, with the Gent.

E. 49. *Rep.* is said to be in the Country.

E. 53. *Alc.* and *Dia.* are said to be gone into the Country.

E. 63. *Nic. W.* is said to be in Town, he is said to be in Health.

E. 64. *Trist.* is said to be out of Town the next Morning.

E. 65. *Rep.* is said to come to Town, *Rep.* and *Alc.* to be in the Country.

E. 73. C. *Sanders* is said, and with a *Prison* in the Country.

These are all instances, where the same Circumstances are mentioned of other Persons, that are mentioned of *John* and *Algernon*.

If *John* and *Algernon* are almost unknown, it is because he was the principal Person in this Correspondence.

But this malicious Contrivance must be carry'd on by Mr. *Kelly*: for

It has been proved that the Letters were written in his Hand, that the Answers were oblig'd according to his Directions.

That he received the Letters to direct.

I believe your Lordships have no Suspicion that Mr. *Kelly* bore an Ill-Will towards the Bishop?

I am sure there has been no Proof of it, nor of any malicious Contrivance against him.

But, my Lords, this is the common true Excuse of every poor Offender. Your Lordships can scarce read a Trial, where the Defendant don't complain that it is all a malicious Contrivance of his Enemies.

I heard this very thing warmly said upon a few Persons just at another Bar, and with as much Proof, by a Person concern'd in a Part of this Conspiracy, who has since been assisted and own'd his Guilt.

But will further, we have shew'd that *Kelly* was an Acquaintance of the Bishop of Rochester's.

Which is indeed acknowledg'd, without any satisfactory account given for what purpose his Lordship should contract an Acquaintance with a young Fellow that has deferr'd his Orders, and is a professed Non-juror.

Your Lordships, I presume, from the Behaviour of Mr. *Kelly*, can hardly be persuas'd that he had no other Employment under the Bishop than to furnish him with Beaver-Stockings, which the Bishop owns to have received from him as a Present.

But we have prov'd by the strongest Evidence that can be, by a Letter under his Lordship's Seal, and I may venture to say (from the Observations that have been made from the Letter itself) under his Hand, that *John*, i. e. *Kelly*, is the Person in whose Hand the Bishop returns his Answers. No Account is given of this Letter, by whom it was wrote, nor to whom, nor how it came among his Lordship's Papers.

All that is said in answer to it is, that 'tis possible Scals may be counterfeited, or there may be several Impostors of the same Seal; but is there any Proof of it?



It is possible that I might have broken when seized; and that I might have been taken to the House of Commons before the Court was taken, and that it might have been impossible to imagine an attempt to be made to take me to the House of Commons.

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such Term as not to contravert any Part of the Charge inflicted upon the Criminal for the Bill.

It is chiefly intended to enforce some particular Circumstances Times, without any Dissent of the general Charge, or the least Declaration of Absolution or Exemption towards any particular Magistrate.

But if a Person is intended to a direct and positive Denial of Charge, there ought not to have any Weight with your Lordships, for this is a Defence exactly in the power of the in it guilty as well as the innocent, a little Proof is better than many Prosecutions.

And I can't help observing upon this Head, and I hope his Lordship won't impute this Observation to Ignorance, but a Sense of my Duty which obliges me to make all proper Observations. That it appears his Lordship has not always that strict Regard to Truth, which he ought to have, by the Papers taken upon his Sermon at the Tower.

The Nature of the Punishment has been much talked of in the Course of these Proceedings, and great Lamentations made upon it, but fairly without any Reason.

For this Argument supposes the Party guilty of the Charge, or else it is ridiculous to object to the Severity of the Punishment.

And I may venture to affirm, this is the mildest Punishment that ever was inflicted for such an Offence.

His Life is not touched; his Liberty nor Property affected; he is only expelled the Society whose Government he disapproves, and has only wound to subvert, and is deprived of the public Employment which the Government has intrusted him with: The Improvement of his Life, his private Estate, and his Liberty, under any other Government that may be more agreeable, is allowed him.

This is scarce to be called a Punishment, being nothing more than what was absolutely necessary for the publick Security.

The Commons of Great-Britain have done their Part towards providing this Security, and I don't doubt but it will meet with the Concurrence of your Lordships.

The Council having done, the Lords in a grand Committee went to the Bill, and about ten of the Clock at Night adjourned to Wednesday, May 15.

Then Lordships being then sent, the aforesaid Bill was read the first time, and a Motion being made, that the Bill should pass, it occasioned a long Debate, in which the Bishop of Salisbury spoke as follows:

My Lords,

As I have sometimes troubled your Lordships with what I had to say in other Debates, I believe it will be expected that I should say something in a Case so extraordinary as this, and wherein a Brother Bishop is so nearly concerned. I bear leave to begin with taking Notice of some Things that were peculiarly addressed to this Bench, both by the Reverend Prelate, and his Council, from the Bar.

The first is, That we would consider how agreeable it may be to the Canon and Discipline of the Church, in this extraordinary Manner to deprive a Bishop of all his Preferences; and to prohibit him the Use and Exercise of his Function for his Life.

As to this Objection, whatever Influence it may have abroad among ignorant People, when the Speeches come to be printed; yet, as to your Lordships, who know our Constitution so well, I cannot imagine that it will be of any Weight or Influence at all. And indeed when I consider the Acts of Parliament relating to the Supremacy, that have been made in our two hundred Years; when I consider the Articles of our Church or Canons, and the Subscriptions that the Bishop himself must have made, and must have required from others, in the Exercise of his Function as a Bishop, when I say, I consider all these things, it is matter of Wonder to me, that such an Objection should be made, either by a Bishop of the Church of England, or by a Lawyer of the Kingdom of England.

I do not indeed recollect above one Instance of a particular Act of Parliament made to deprive a Bishop; which is, that of Fisher, Bishop of Rochester who was deprived in the Time of Henry VIII. But, as to general Acts of Parliament, whereby both Bishops and Prelates have been deprived of their Preferences, we have a good Number. Thus, at the Beginning of Queen Elizabeth's Reign, almost all the Bishops of England were so degraded. And at the Reformation, many were so; and it might have been so, if they had not complied with the Terms of the Act of Parliament. And at the Reformation, many hundreds of Prelates were so degraded in the same manner. And I conceive that it cannot well be doubted, but that the same Authority which can make Laws by which the whole Bench may be deprived, may exert itself in a particular Case, if they have just Reasons for it.

As to the Trial of Bishops for any Crimes they shall be guilty of, we are to consider the different Nature of the Crimes of which they are accused; and the Trial by Law must be accordingly. If the Crime be of an Ecclesiastical Nature, such as Ecclesiastical Courts can take Cognizance of, as Simony, Heresy, and the like; the Trial regularly must be by the Arch-Bishop of the Province, taking to his Assistance five of his Suffragan Bishops. But even in this Case, if either the Arch-Bishop of the Province, or any one of the Bishops, be unwilling to try him; or, if upon Trial he shall acquit and absolve him, the Accused may appeal to the King as Chancellor: Which Court may appoint a Commission of Delegates, who may, by the Authority of the Crown, judge him, deprive him of his Bishopsrick, prohibit him the Use of his Function for his Life (if the Crime deserves it), though he were before acquitted by the Arch-Bishop. But if the Crime be of a Civil Nature, such as Treason (which is the Case now before us) the Ecclesiastical Authority has nothing at all to do with it, and should any Ecclesiastical Judge attempt to meddle with it, he would be judged to attempt against the King's Crown and Dignity, and would be liable to have his Proceedings stopped, by a Prohibition out of the Temporal Courts. And I would beg leave to observe further, that were this Bishop to be tried as the common Counts of Law for the Crimes whereof he is accused in this Bill, it must be either by your Lordships, as a Member of this House; or by the Judges



use a Jury in *Wyndham-Hall*. I would not at present say which, because it would lead me out of the way: But in this Case, if either your Lordships, or the Judges below, should pass Sentence upon him for the Treason of which he is here accused, that Sentence would, *ipso facto*, deprive him of the Bishoprick: It would also make him liable to life imprisonment, but it would not, *ipso facto*, take it away, as it would his Bishoprick. But it might, notwithstanding that Sentence, live many Years; but not the Moment of it, would be no more Bishop of *Exeter*.

Think Things, I humbly conceive, are abundantly sufficient to answer this first Difficulty; and therefore I shall add no more but this one Observation. That the way that is now taken to deprive him, is the only way that I know of, wherein the Bishops can have any Part in the Sentence of Deprivation.

The next Thing that was suggested from the Bar, particularly to this Bench, was, That we should consider well what we are doing, and have care that we do not, by concurring in this Bill, make our Titles to our Bishops precarious.

As to this Advertisement, the Answer is very easy. That it becomes us, as we have the Honour to have Seats in Parliament, to take care to do Justice, as, on the one side, to the Prisoners, so on the other side, to our King and Country; and to trust in God, that in so doing we shall neither hurt ourselves, nor our Successors. But, so far as just Judges may look to Events, the Argument seems to me to lie the other way: For, if in want of doing Justice against Treasons to King George, the Pretence should happen to prevail, (which God forbid) the Title of Protestant Bishops is like to be very precarious indeed.

As to the Power of Parliament to pass Bills of this kind, the Parliament always had, but frequently exercised it, and always with great care; it being essential to the very Being of the Supreme Power. The Lives and Liberties of every Man in England are subject to it: and though the Exercise of this Power may be dangerous to Persons who will venture upon unlawful Practices, treading in their Cunning and Artifice to flatter themselves from the Law, yet I have that Confidence in the Integrity and Justice of the House, and two Houses of Parliament, that, so long as this Example is followed, of giving a full and fair Hearing to the Prisoners accused, innocent Men cannot easily suffer, even in all Events, that if Corruption or Faction should ever so far prevail, that there should be Danger to innocent Persons, it will be much easier to remove Witnesses or Jurors, or to find other Methods to destroy them, than it will be to prevail upon a Parliament to do it: As I am persuaded that, in this particular Case, had there been any Corruption, some other Method would have been found out, more effectually to cease at the Person concerned than this is like to be.

The last Particular that the Bishop peculiarly address'd to this Bench, was, That we would consider the Words of St. Paul to Timothy, Against an Elder receive not an Accusation, but before two or three Witnesses, 1 Tim. v. 19. The Sense of which Words his Lordship understood to be, That an Accusation should not be so much as named against an Elder or Priest, and much less against a Bishop, but upon the Oaths of two or three Witnesses.

In answer to this, I beg leave to observe, that our Translations renders the Words, not, *upon two or three*, but, *before two or three* Witnesses, which seems to import a very different Sense from that his Lordship puts upon them. But, not to enter into any critical Examination of the Truth of our Translations, or what the real Sense of the Words is, I would only mention two other Observations: First, That the sense the Bishop puts upon them, that an Accusation against a Priest or Bishop, must not be so much as receiv'd into Court, but upon the Oaths of two or more Witnesses, is not practised in the Church of England, and, I believe, never was practised in any Christian Church whatever.

The second Observation I would make, is, That whatever be the Sense of these Words, it regards only the Conduct of a Bishop towards his Prelates; but certainly was never intended to give a Law to the Supreme Power of a Kingdom, in its Proceedings in Cases of High-Treason, against any Subject whatsoever.

But the Bishop urges further, that the Jewish Law did require at least two or more Witnesses in all Judicial Proceedings; and from thence infers, that it ought to be so amongst us.

In answer to this it may be reply'd, That this is a Part of the Judicial Law of the Jews, which was not given to us; and therefore does not oblig us any more than the rest of that Law does, except where the Reason of the thing lays an Obligation upon us. But, indeed, I am of Opinion, that that Law does oblig us, in so far as it was intended to oblige them, and so far as it can be adapted to the infinite Variety of Cases that must happen in Judicial Matters. That Law is very strict, and therefore must have many Questions that may be made about it undetermined: I shall at present take notice of those two only, which may be material to our present Dispute, the first is, Whether the Meaning of it be, that all Controversies and Accusations whatever must be determined by Witnesses; and the other way I am, Whether upon Supposition that the Matter be to be determined solely by Witnesses, and no light can be brought to it any other way, that then the Witnesses must be at least two. The first of these, I think, the Witnesses must consist of at least three, for I believe, that they few such a Man murder another, as he like I; or whether it may not be sufficient, that they swear to such Circumstances, as infer a strong and violent Presumption that such a Fact was committed by such a Person?

These things are left undetermined in that strict Law of the Jews; but I humbly conceive, are sufficiently determined by the Nature of the thing, and by the Laws of all Nations, and particularly of our own. It is true, indeed, that in Cases of High-Treason, we have from Political Considerations determined, that there must be two positive Witnesses to some one or more Offences-Acts of the first Treason, but, as to all other Crimes, that equally affect the Lives and Estates of all the Subjects of England, that is not the Case; and Men may by Law lose their Lives when there is but one positive Witness to the Fact. I beg leave to explain

this in the Words of my Lord Chief Justice Gaj:

\* *When a Trial is by Witnesses, it is not the Affirmance* \* s. 101. *Art. 4.*

\* *is to be proved by two or three Witnesses, but when the*

\* *Trial is by Proof of the Facts, then the Judge is not bound to give them*

\* *Wives, or other kind of Evidence, but upon the Facts, and upon such Evidence*

\* *as is given in the Trial, they give the Verdict, and may then find*

\* *regularly with other evidence, a Verdict contrary to the Evidence.* \* And, indeed,

if no Man could be convicted of Murder, or Rape, or other Crimes of that Nature, but by two positive Witnesses, then the Fact itself, is a thing

which would be easier or harder than the Conviction of those Crimes; and no Man

could have any Security, either in his Person or his Estate: And therefore, if in Cases of High-Treason our Law requires positive

Witnesses, it is not from any moral Necessity, or point of Conscience; but from

political Reasons, which must, and always will be, subject to the

Judgment of Parliament.

Having now done with what was from the Bar peculiarly address'd to this

Bench, and having, I hope, given a very plain Answer to it, I now beg

your Lordships Leave to proceed more directly to the Bill itself. And here

two things are necessary to be considered, in order to come to your

Lordships, that it is a Bill to be passed. The first is, the Lawfulness of it;

the second is, the Prudence or Expediency of it.

As to the Lawfulness of it, it will be necessary also to consider two

things; first, Whether your manner of Proceeding in this Bill be lawful?

secondly, Whether the Bishop be really Guilty of the Crimes charged upon

him?

As to the manner of Proceeding, many things have been objected:

That it is by way of Bill, and not a Trial in the Court of Law; That

Evidence has been admitted, that would not have been admitted in any

of our Courts; that these Things are contrary to the Liberty of the Subject;

That every Subject has a Right to the Laws of his Country; and I have

been an Inquiry done him, if he be denied the Benefits of them. Thus I

take to be the Sum of what has been objected against the Justice of your

Proceedings in this Bill.

In Answer to these Objections, I beg leave to consider, first, Whether

the Liberty of the Subject and of the Courts, which is a Point commonly put in

such manner. Many People are apt to imagine, that the Difference between us,

and some of our neighbouring Countries, is, that they are under Absolute

Power, and we are not; whereas, in truth, all Countries that are

Supreme within themselves, have equally an Absolute Power; and in the

Name of the thing it cannot possibly be otherwise: No Government can

fulfill, if there be not a Power in it to change, to abrogate, to suspend, or

dispend with its Laws, as Necessity or Convenience shall require,

which is what we call Absolute Power; and therefore, the Difference be-

tween our Government and another does not lie in this, that one has such a

Power and the other has not; but lies merely in the Difference of the

Hands in which this Power is placed. When this is placed in one Hand,

in the King, we call that an Absolute Monarchy: Where this is not

fully in the King, but only as he sits in conjunction with the Senates of

the Kingdom, that we call a Limited Monarchy; and the People that live

under such Government, are called a Free People, because they live under

Set Laws, which could not at first be made, nor can afterwards be altered

or dispensed with, but by their own Consent. However, there is still in

the most absolute Monarchy in the World.

What I have said upon this first Head, will in a great measure explain

a second Question, What that Right is, which the Subjects of our Coun-

try have to their Laws? Which is, in short, a Right to claim the Benefits

of them against the Crown, or any Court sitting under the Crown, till the

Senates of the Kingdom (which are virtually every Man in the Kingdom)

think fit to consent to the Alterations of them. The King is indeed Sup-

reme, but his Power is only according to the Laws in being: By them he

is bound to act, and if any of his Officers act contrary to them, what they

do is null and void, and they are punishable for it; and the Subjects have

a Claim of Right against them. But of the King and his People think

fit to come to a new Agreement to alter any such Law, there is no end of

all Claim of Right in the Subject. The Claim is taken away by their own

Consent; for, as I said before, every Man in the Kingdom virtually con-

sents to what is done by an Act of Parliament.

And there is an absolute Necessity that there should be such a Power as

this in every Country; for the State of human Affairs is so changeable,

that it does not admit of any set of unalterable Laws. What is good at

one time, may be destructive at another; and what is generally good, may,

under particular Circumstances, require a Dispensation by a proper Au-

thority. And here give me leave to observe to your Lordships, the Difference

between the eternal Laws of Justice and Righteousness, and all positive

Laws whatever. That as to the first, we are made for them, and

the newer we do in all things conform to them, the more noble, and

lovely, and excellent Creatures we are: but as to positive Laws, they are

all made for us; and the more they conform to us, the more they oblige

all our Wants and Difficulties, the more they answer to all our Necessi-

ties, the better they are.

As to what is complain'd of, that your Lordships have admitted Evi-

dence not to be read that would not have been admitted in the Courts: I

conceive, that adding in the Capacity you now do, you have a full Power

to do it, and have not broken any of the general Rules of Justice by it.

You have let in all the light that you thought might be proper to give you

a full Knowledge of the Matter; and in the Capacity you now act, I

cannot but humbly be of Opinion, it was your Duty to do so; but in

forming your Judgments, I take for granted, that your Lordships will

deliberate, and lay no more Weight upon any thing than it deserves.

As to the Rule of receiving Evidence in *Wyndham-Hall*, I conceive,

that they are no Part of a rural Justice, but only civil Rules from the

Constitution; and kind no Country, but as they have agreed to them, and

so become the Customs of the Court. That these Rules are no Part

of natural Justice appears from hence, that even among ourselves they

are different in different Courts: That such odd and queer Customs are very



different from those and in other Considerations: That they differ here, according to the different Causes or Crimes that are to be tried. Nay, they are so far from being fundamental Parts of Justice, that they must require a good deal of Time and Art to form them. And I am persuaded, that was a Person of good natural Sense, who knew nothing of the Law, and his Opinion, he would be apt to think it to be a Part of natural Justice, that every Person that prosecuted a Cause in any Court, should be at Liberty to produce before that Court whatever he thought material to his Cause. And there is no doubt, but that this was the original Way of Proceeding: but that in process of Time, when Causes came to have a good deal of Business, and they found it very uneasy, that the Way of laying every thing before 'em could be laudable Causes, (which was especially inconvenient where Cases are concerned, who must send a Cause before their part) their Rules were gradually found out; which, tho' they may be, for the Reason above specified, generally convenient, yet may sometimes hinder Justice, by not suffering all the Light to come into Courts, that may be material in the Cause.

Having said thus much concerning the Justice of your Method of Proceeding, I now come to consider the second, and the main Part of Justice to be regarded in this Bill, which is, Whether the Bishop be Guilty, or not, of the imputable Profections charged upon him in it. And in this I shall be the shorter, because your Lordships have heard the Evidence on both Sides, and all that has been said from the Bar by both Sides upon it; and because there are many Noble Lords in the House, much abler to lay things of this Nature distinctly and clearly before your Lordships than I am.

The Cause of *Kelly* is so connected with that of the Bishop, that I shall beg leave to speak a few Words to the one before I proceed to the other. As to *Kelly*, I would observe in the first Place, that some Prejudice of my Guilt in, that when he was first taken up, he refused the Officers, that he touched his Sword and gave Papers that had been taken every 'em from him; and was reluctant to burn such Papers, tho' with the appearance I said of his own Life, and being guilty of the Murder of one of the Officers that had fired him.

In the next Place, it is prov'd before your Lordships, that after he was taken up, the People at his Lodgings burnt the rest of his Papers; a plain Evidence, that they who knew his Manner of Life and Conversation, suspected that he was Guilty. And this is agreeable to what *Noyes* told the Chancellor of the Exchequer; that there was at that time a general burning of Papers.

Thirdly, Another Presumption of his Guilt is, that when he was taken up the second time, he offered several Sums of Money to the People of the House where he was in Custody, to suffer him to escape, as appears from their Oaths at the Bar. These things I mention, not as full Proofs of his Guilt, but as strong Presumptions, that make every thing else that is finora against him very credible.

The chief Evidences of his Guilt, are, a great Number of intercepted Letters, both from him, and to him, containing treasonable Matters. Those from him, are by several Witnesses prov'd to be his Hand-writings, particularly by the Officers of the Post-Office, who took them and transcribed them. And as to those to him, several Witnesses have prov'd that he gave Orders at several Publick Houses to take them up, when they came from the Post; that he himself received them from thence, opened, and read them; And it is also further prov'd, that Answers were returned to them in his own Hand-writings. These things altogether, I take to be such plain and strong Evidences of his Guilt, that I shall trouble your Lordships no further about him.

As to the Person concerned in this Bill, tho' it be a great Trouble to me, to think that any Bishop of this Church should be guilty of so great a Crime as that which is laid against him, yet I cannot but be of Opinion, that if he be really guilty, the Interest of our Church, as well as Justice to our King and Country, do require, that he should be convicted and punished. And indeed, I cannot but be humbly of Opinion, that whoever believes *Kelly* to be guilty, must believe the Bishop to be guilty too.

I shall not insist upon what is commonly call'd *Heur-fay* Evidence, tho' there be a great deal of it against the Bishop; only I must observe, that the Conduct of a Protestant Bishop must have been very odd and unacceptable, if he be accused, that so many Jacobites (as have done in this Cause) should declare, that they not only believed him to be in the Plot, but to be the chief Conductor of it. It is, however, fit to say something at to the Cause of *Noyes*; because the Bishop and his Counsel have taken up to much of your Lordships Time, and produced so many Witnesses to prove him a Kisser, I shall myself always think him to be a Kisser, and that nothing that is said to be believed, merely upon his Authority. But on the other side, the Testimony of the greater Part of the World may be taken against himself and they themselves have power, that he was a Jacobite, and thoroughly in that Interest, even when he was making some Discoveries against them; and therefore, what he says, in that respect, bears some Weight, in being against Persons whom he favoured, and would have as little as possible. Some other Thing, that he had said are also confirmed by concurrent Circumstances, and other Discoveries; and these say have their Weight, tho' be were none so great a Kisser. One of the Things that he said in his Confession, was, that he frequently went with *Kelly* to the Bishop of Rochester's, and left him there (as *Kelly* told him) to write his Letters. This is confirmed by a credible Witness at your Bar, who swears, that *Noyes* used to be frequently at his House, and told him, at least three or four times, that he waited there for a feasible, ingenious Gentleman that was gone about Business to the Bishop of Rochester: He did not indeed tell him his Name, but the thing seems to me to look stronger than if he had; because it seems to have looked more like a Piece of Art and Consequence to have told the Name of a Man, when he knew he was to go to the Bishop about a Criminal Correspondence. I would only beg leave to take notice to your Lordships of one thing more relating to *Noyes*: the Bishop's Wife says she has fully given, that *Noyes* told them, that the Chancellor of the Exchequer had given him several Sums of Money, to endeavour to get out of *Kelly* the Explanation of the Cant Names that were used in the Correspondence; and that he had promised him

much greater Sums, if he would go to France, and set it out of of the Jacobites there: the Evidence from which I mention is, that the Court did not then know, who the Person was that was sign'd by these Cant Names; and that they did believe it to be *Kelly*; and that *Kelly* and the Bishop in France knew too: which is a plain and fully consistent Case fully proved of the Bishop, of which I have been bringing the best Proof, that the Plot was a Conspiracy at Point Power.

The next Thing I would beg leave to take notice of, relating to the Bishop, is a Letter (taken among his Papers) from a Lord of Quality, of which the Bishop, tho' it was objected to him by the Counsel for the Bill, has taken no Notice, which I cannot leave he would and right to have done, had he been a \* \* \* \* \* possible to give any fair Account of it. The Lady is an \* \* \* \* \* that Letter tell him, that for fear of the Bishop that he did not want to tell for whom; but he is to be where it would, for though it is not right, and that it could not be put into better Hands. A \* \* \* \* \* considering all Circumstances, that here was a Correspondence with the Bishop, which the Lady did not certainly know, but before the Bishop might or, however, that he was in all Events a Person trusted.

Another very suspicious Circumstance against the Bishop, is, the Letters from Captain *Helyard*, and what has been proved at what time these Captain *Helyard*, while he was in his Ship so far from being a Duke of Omelet, wanted upon \* \* \* \* \* and stay'd much time on the Bishop. This Thing added directly proves another; but all things considered, very suspicious; and the more so, because the Bishop has given no account, either of his Acquaintance with him in general, or as the person that he was in that Visit, at a time that leaves so much ground to suspect the worst.

The next Particular that deserves your Lordships Consideration, is the Letter to *Davies* found among the Bishop's Papers; and the Letter taken upon the Bishop's Servants, which he confesseth to be his own Hand-writing. It is not indeed prov'd, that the Letter to *Davies* is the Hand-writing of the Bishop; but any body that reads it, will easily perceive, that it is not the natural and ordinary Way of Writing of a Person, but a disguised Hand like a Poet; except only from few Letters, which escaped the Care of the Writer, and are very like those of the Bishop. But after a long Examination, which has taken up a great deal of your Lordships Time, it appears plainly, that the Seal on the Letter, and that the seal could not be counterfeited from the other; because the full Letter was equally taken with the seal broken, and the full Possession of the House of Commons when the second Letter was taken upon the Bishop's Servants. It appears plainly by that Letter to *Davies*, that the Person who wrote it was in a secret and dangerous Correspondence with the Bishop, and was an Acquaintance of Mr. *Jackson*, or *Kelly*; that he secured the Letters by his Hand, and wrote an Answer in his Hand. How far these Circumstances, taken together, prove the Bishop to be the Author of the Letter, I shall submit to your Lordships Judgments. For my Part, I think they do, especially considering, that the Bishop has given no Account of it, which he ought to do by Law, of a Letter of this Nature, placed upon Oath to have been in his Possession.

I now beg leave to proceed to that which is the principal Charge against the Bishop, the diffusing to Mr. *Kelly* the three Letters of the 20th of April; sign'd, one, by the Name of *James*; another by the Name of *William*, the third by the Figures 1735; which the Deputies explain by the Letters R. The first directed to Mr. *Chivers*, or *Dillon*; the second to Mr. *Argyrou*, or Lord *Merr*; the third, to Mr. *Jackson*, or the *Peasants*.

It may be proper, before I take notice of the Proof which shews that the Bishop did really diffuse these Letters, to take notice of an Opinion with respect to the Time: The Letters are dated the 20th of April, and the Bishop has produced five or six of his Servants, who swear, that that Time he was very ill, that he could not write himself, and that he did not let any Person to whom he could dictate these Letters. Now, to answer to this, it may be replied: That it does not appear, that all his Servants which the Bishop then had, were produced before your Lordships; and you cannot but be sensible, that treasonable Practices are not usually carried on in a very secret Way; and it appears, that the Bishop's Correspondence with *Kelly* has been so carried on; for tho' there is no Evidence, that they were first put together, and that they were secured in confidence, both by the Bishop and *Kelly*, yet, having any of his Servants produced would certainly that ever they had it. And, as I have much to say here of the Name of *Jackson*, which was the Name which he used. In the next place, none of these Witnesses prove, that the Bishop was bad that he could not so Company, till about the 10th or 15th of April; and 'tis very probable, that the Letters must have been dictated so long, if not longer, before the 20th, on which they are dated. *Kelly* was to transcribe and put them into Cypher, which was the Work of Time and Care; and perhaps, as well, they might be dictated to Court, might have all that to plead which your Lordships have heard. The Matter should ever be called in question.

Upon all these Considerations, I cannot but think it very clear, that the Bishop might have dictated these Letters: We are now, therefore, to examine whether he did or no.

The first Thing that brought any Light into this Matter, was the small Accident of a Dog being sent from France, which, by the same small Lesson appeared to be first to one that went by the Name of *James* and *Argyrou*. When a Mrs. *Berke* was examined before the Council upon *Kelly*'s being taken up, it appears plainly he was upon the Retainers of *Kelly*, but being ask'd about this little Dog, who it was that he readily answered, That *Kelly* had told her it was for the Bishop of Rochester; which she has since confirm'd by Oath at the Bar of this House. This little Accident, not suspected at the time of the Discovery to be of











the Examinations of Mr. Noyse are the next Points that are laid before your Lordship: And, indeed, I must do the Gentlemen as the Bar the Justice of it, saying, That they forbore continuing any thing of them when they could not be charged.

It is a Curious that such Proofs could not have the full weight in the Bishop, that that in the Case of Mr. Kelly they were produced only to say that they were not to be taken into consideration, yet they did not think it proper to say so against the Bishop, which, I am thoroughly persuaded, would have appeared at your Lordship by the Examination of Mr. Kelly, and the several Opinions which every Person learned to be the Opinion of Mr. Noyse's Transcripts.

Mr. Kelly, in the Examinations were never signed by the Petition, neither was he examined to them upon Oath: So that were they of Consideration, as to a Person of Credit, they could not be admitted to effect any thing, and therefore, in any Court of Justice or Equity, I don't mean, that they could not be read according to the third Rule—*By the Bishop*—which is admitted on all Sides they could not: But I don't affirm, that such Credit can be given to 'em on any account whatsoever.

The Petition was closely confided, and consequently in the Hands of the Government: In that he was at that Time under the great Approbation, which might, in some measure, prevent him from speaking Truth, with that Singularity and Candour of which every Person ought to be Master, when he is examined on Matters of such nice Nature.

These three Papers were entirely given up by the Council for the Bill, yet Extract of them was read, and they are the visible Foundations of the Charge: And if they are insignificant, the whole Accusation falls to the Ground: For the whole Proof of the Bishop's declining to Mr. Kelly, depends on Mr. Noyse's bare Assertion.

The whole of what Mr. Noyse says, or is supposed to say, in that Mr. Kelly had him to write the Bishop's Letter for him: Mr. Kelly denies, and Mr. Noyse is so confident that he had been guilty of many Crimes, that he is constrained to withdraw from Justice, and the Presence of God, it is said, interrupted him.

My Lords, if you will consider the Improbabilities of this Evidence, as it was upon Oath, and signed by him, it cannot be supported. He tells you, that he was intended to draw up memorials to the Regent: Yet none of these have been produced: And yet it is apparent the Copies of them might, with Ease, have been obtained, if he had been as thoroughly pressed to deliver them, as he was to declare he wrote them.

Think, Memorials, he says, were wrote by Order of Mr. Henry Perce, whom he takes to be the late Earl of Arundel: And I am certain Mr. Kelly did not so think that Fact material, when you came to a Resolution, that the Bishop of Rochester should not be at Liberty to stir up Party, was made of the late Mr. Noyse, or if he gave any Satisfaction to the Lords of the Council, touching that important Fact of *Walspole's*, whom he took to be *late Marquis*, lying with him several Nights.

It was very well observed by a learned Gentleman at the Bar, That nobody can believe the late Earl of Arundel would have refused to grant a Confidence in a Person who was so ready a Stranger to him, and of such little Name; and the Justice Party must be in a loose Condition, when they make use of such a Creature to write Papers of that Importance.

There is so much Imprecision in this and other Points, and so much Contradiction in several Parts of his Examinations, that they appear to us, and must to all reasonable Men, as the Dictates of Fear, and not agreeable to Truth.

He mentions, That the Reverend Prebend (for such I still may call him) had some Favours offered him by the Court, but that cannot be true, and must be added to the rest of these Absurdities.

But, my Lords, what in my Opinion shows up all these Matters, and makes it impossible for me to give the least Credit to this, or any other Part of his Charge, are, The several Testimonies of *Blagby*, *Steele*, and *Stewart*.

I must observe to your Lordships, That the two first Persons, *Blagby*, and *Steele*, are actually now in separate Custodies, and consequently could have no Communication one with another. The Third is at Liberty, but his Testimony is so thoroughly supported by Mr. *Garda* and Mr. *Knapton*, that no doubt can arise as to the Veracity of it.

These Gentlemen, who are in the Hands of the Government, are under Bonds and Fears; and therefore, it is certain, when they speak a Language, which, perhaps, may be disagreeable to those on whom they at present chiefly depend, it must be the Spirit of Truth that prevails. Mr. *Blagby* was before us in the Case of *Kelly*, and was also examined at the Bar of the House of Commons, but not upon Oath, and that he had been more severely treated, as he told your Lordships, and more thrice examined than his first Examination, yet he has testified as his Story: And that he was so long at your Bar, and to many Questions put to him, yet he never varied as to any Circumstance, but appeared consistent throughout the whole Course of his Behaviour.

I shall not detain your Lordships with recapitulating his whole Evidence, for I did it very fully on a former Occasion. But your Lordships will remember, he told you, *Noyse* showed in *Blagby*, which *Noyse* said (after he was apprehended at *Dart*) was *Harvard's* Person (and in this Occasion, I hope, I may name him) Mr. *Walspole*, gave him. And particularly, he mentions that which *Noyse* said he received the Night before he went to *France*.

*Blagby* told your Lordships, That *Neyron* had offered him, he said to him, *Harvard's* Person in the *Sabbat-Ford*, at *Chelms*: And, my Lords, Entered on which he was going to *France*, was, to discover some thing relating to Cyphers, which he would have engaged *Blagby* to have done for him, and particularly, to get them, if possible, out of Mr. *Kelly*.

And, my Lords, he said, *Noyse* said to *Blagby*, would be of great Service to him, that *Noyse* had declared to him, *He is to be ever with Mr. Kelly*, and he was aware of it, or Words to that Effect: And that Mr. *Kelly* was firm's friend's acquaintance with Mr. *Noyse*, of whom he had received a great Opinion.

That *Noyse's* Father refused him Money, which makes it highly probable that his Poverty was the occasion of his Villany: And that when he was taken at *Dart*, he had declared to him, Mr. *Walspole* expected to find

the Plot about him; and since Mr. *Walspole* could not, he must make use of him.

*Noyse* told *Blagby*, That it was *Harvard's* Person he used *D. Arundel* in the Bishop of Rochester, *Blagby*. He would not allow the Plot to be the *Harvard's* Person; which is sufficient to convince you Lordships how little *Blagby* ought to be believed in the least of his Evidence in this Case.

Mr. *Blagby* says, That Part of this Account he had given to the Lords of the Council: And I don't but believe, that his Examination, as well as some others in the same purpose, which we have taken about the same time, have been before the Parliament.

Mr. *Steele*, who is now in *Calcutty*, has deposed, That he lay in the same House with Mr. *Noyse*, and had some Conversations with him.

That *Noyse* had told him, What he had said of the Bishop of Rochester was entirely false.

That Mr. *Walspole* had offered him a challenge to draw by sword, Evidence, and had given him Instructions, before he was called on in the Lords, which *Steele* would be glad to see, and what Answers he should make, and threatened him with Newgate if he would not comply.

*Steele* says further, That *Noyse* twice (and I hope the Reverend Bench will, in such a Cause, give me leave to repeat the Words), by God, there was no Plot: One of Mr. *Walspole's* offers if the proofing Letter, as one of his to Mr. *Walspole* of *Blagby*. And thus seems to be the only kind of story that Mr. *Noyse* would say any thing upon Oath.

To continue the Word, what a Creature the *Noyse* was, he tells *Steele* further, That one at *Lord Townsend's* Office, he had a great deal to say to him, that he was the *Gloucester* of the *Kingdom*. He tells you, That Mr. *Steele* wrote a Paper to the Lords, that he had said of *Lord Ormsby* was false.

My Lords, the next Witness was Mr. *Stewart*, who was examined in *Calcutty* when *Noyse* was brought to Town from *Dart*.

*Stewart* says, That he from the second Night with Mr. *Noyse*. That *Noyse* had told him, what he had said of the Bishop was false, and that Mr. *Walspole* had offered him a great Sum of Money, if he would favour a *plot*, and turn Evidence, which he declared he could not do.

That Mr. *Walspole* had taken him one another N in before he was examined, and told him what *Steele* would probably be asked, and what Answer he should give.

He says, That *Noyse* told him, that he had been to *Lord* *Walspole*, and he put on End to the Plot: And that Mr. *Walspole* had given him a Paper of Questions, which he was to answer, as well as to let it go against the *Protestant* *Law*.

As a Confirmation of his Testimony, *Stewart* says, He told this to Mr. *Garda* before Mr. *Noyse* was deposed, and to Mr. *Knapton* before the Meeting of the Parliament.

Mr. *Garda* confirms this Part of his Evidence, and affirms your Lordships, that he had heard it from *Stewart* before the Death of *Noyse*. And Mr. *Knapton*, a Gentleman of an undoubted Character, lately a Member of Parliament for *St. John's*, has affirmed your Lordships, That he was acquainted with *Stewart's* Account of *Noyse* before the Meeting of the Parliament: And adds the same Circumstances, That whereas Mr. *Steele* has said that his Questions pointed, he showed them to *Stewart*, who said, he rejected, and told, *Steele*, *Steele*, what I told you is true.

Such concerning Testimonies from Persons kept in separate, and who are speaking against their own private Interest, must have the greatest Weight, and must at least present my external and regular Partion here giving the least Credit to the bare Hearsay of this Plot or *Noyse*.

If any Doubt could remain, as to the Validity of this Evidence, it is sufficiently confirmed by the Petition brought in before us.

The Chancellor of the Exchequer himself does not pretend to deny that *Noyse* told him only after other Conversations, and to converse with you of *Noyse's* Villany, and admits you, that at the Time he was receiving Favours from him, he was thoroughly convinced he intended to cheat him, which was the Occasion of his being apprehended.

He owns the Transaction between them before *Noyse* went to *France*, and particularly the Money mentioned by *Blagby*, which are Proofs that *Noyse* must have disclosed their Secrets, since they could not come from Mr. *Walspole*; and He and *Noyse* only were privy to it.

Mr. *Walspole* has been your Lordships the last Draught of the Questions mentioned by *Stewart*; and what he denies that Part of *Noyse's* Declaration relating to the Instructions given him before the Examination, he owns, he was twice alone with him; once the first Night of his being brought to Town, and the second time, when he gave him the Paper of Questions, which might be Foundation enough for *Noyse* to frame to himself a Falsehood.

The Witnesses brought by the Council for the Bill, to the Character of Mr. *Blagby*, seem rather to confirm it than otherwise, and all agree, they never heard any thing against his Morality.—They indeed have said, he bore the Character of a *foolish*, and suffered for having expressed a Liberty: But Mr. *Baron Coke*, who was his Judge when that Punishment was attached on him, has told your Lordships, That his private Life was not reflected at his Trial, and that neither Perjury nor Forgery were ever laid to his Door.

That the Punishment he suffered was the Pillory, yet it is the Crime, and not the Punishment, that makes the ignominy; and for this I can appeal to the learned Judges.

In order to destroy the Evidence of Mr. *Steele*, they produced one *Perce*, who tells you, That *Steele* had revealed many Secrets to him relating to the Plot; and particularly of a *Military* Chief, which was collected to carry on that supposed Design, and support the *Testimony*.—But I presume every body who heard the two Persons at the Bar, could not but remark the Strangeness with which Mr. *Steele* denied this Assertion, and the Confusion with which the other affirmed them.

Mr. *Perce* seemed to drop something which entirely destroys any Credit that could be given to him, by saying, That he had owned to Mr. *Steele*, that he was a Friend to this Administration, and yet he swore, That after such a Declaration, *Steele* had still persisted in his Story, and revealed those Parts of this Intelligence to him. How far this is probable, your Lordships are the best Judges.



Mr. P. *prosequens* farther, and said now. That Part of this Conversation happened in St. James's Church, and not in the Duke's. That Duke was not a Lord of the Court, and that I can't conceive why we have never seen him at his Lordship's, where it would have been so easy to have brought this conversation Witness to Mr. P. *prosequens* Testimony.

I can't but think, That not producing this Man's Evidence, is a strong Circumstance to condemn; or Lordships he did not agree in the same Story with Mr. P. *prosequens*.

There also produced *Shew's* Attorney for the *Protesse* *Revelation*: But there has been in his Act of Grace here, so that he is capable of being an Evidence; and there has nothing appeared to tend to his Character as a Man of Verity.

In order to show your Lordships, that *Noyes* could not possibly make this Confession to Mr. *Stewart* and Mr. *Stewart*, the Counsel for the Bill maintain, That they will prove *Noyes* and the Prisoners were not together after the first Night.

Thus, my Lords, would be very material; but I think it appears, by the Proof brought to support this Assertion, that they frequently have conversed one with another.

The first Witness they call'd, was Mr. *Cransford* the Messenger, in whose House the Prisoners were in Custody, and my Lords, I can't but say, it seems agreed, they should bring a Man to swear he had seen his Duty: He has told your Lordships, that *Lord Townsend* had given him Orders, that *Noyes* should be kept confined, and so, after that, it should appear, that he had seen both such Disorders, there is no question, but that he is truly, and honestly, would have been removed out of his Employment.

Then *Mr. Messenger*, in this Situation, tells you, That after the first Night they were removed, to the left of his Knowledge: That Mr. *Stewart* call'd *Noyes* a Rogue of an Informer, and spoke in very bad Terms of him; which I don't think it appears to Follow well drivers: The second day, That Mr. *Noyes* had some Paper, two Sheets of which he had sent off: He likewise tells, that Mr. *Stewart* lay upon the table, and every day he had at that time two Servants come.

Mr. *Cransford*, his Mother's, sister, That, to the left of her Knowledge, the Prisoners were removed to a new Place: That she kept the Keys of the Prisoners here, but used to find up the Maid, *Hannah Wright*, with the Prisoner—Your Lordships will observe, that both this Woman and her Sister come to the best of their Knowledge only, and are far from positive Witnesses.

Then *Mr. Wright*, when she was first call'd, spoke in the same Language with them, that *Mr. Stewart* is recoll'ded himself better.

When the Bishop came to prison, *Francis Ward*, *Thomas Ward*, and Mr. *Agley* (severally say) I saw this *Hannah Wright* had declared to them, I was the only one to let the Prisoners converse together whenever they had an Opportunity, which was when Mr. *Cransford* and his Mother were out of the way, and that he used to stand upon the Stairs and give Notice when any Person came, that they might retire into their several Rooms. And the other Maid, whose Name is *Christina*, has deposed, that *He* had gave the Key of *Noyes's* Room to *Stewart*, and several times desired *Stewart* to go up to him, and that they were together an Hour or more: And when *Hannah* was called a second Time, she says she was sent for by *Stewart* for having help'd *Agley* to escape: That he has left *Stewart's* Door open, who lay near *Noyes*, and that there was a large Hole in *Noyes's* Door, that which they might converse.

She said, That *Noyes* gave her a Paper, which he was to convey for him, but that it was taken out of her Bosom, and burnt by one of the Prisoners.

When Mr. *Stewart* said, That he sat upon *Noyes's* Bed the second Night, and lay in the Garret where there was a Partition, but a Communication between 'em, *Hannah* said, she could say he positive to that, but believes it true.

Mr. *Cransford*, when he was call'd to that Point, according to his usual Custom, drew it to the left of his Knowledge.

Your Lordships will now judge, whether the greatest Credit is to be given to the Bishop of a Messenger and his Mother, who are testifying that they did their Duty; or to the positive Oaths of *Stewart*, *Stewart*, *Girdle*, *Langdon*, *Francis Ward*, *Thomas Ward*, *Ragel* and *Christina*, confirm'd by the Confession of *Hannah Wright*, when she came to be cross-examined and confronted.

Thus, my Lords, concludes what has appear'd at the Bar, relating to Mr. *Noyes* and his Transactions; and I am pretty certain, every impartial Man, must agree with me, That so far from giving the least Credit to what he says, there has appear'd such Circumstances in the Transactions which are now come to light, that make the greatest Caution necessary, to keep we believe any other Part of the Charge.

Your Lordships will take notice, That Mr. *Cransford* confesses Mr. *Noyes* had the Use of Paper, and four or five Sheets writing; and *Hannah Wright* says she had a Paper from him, which was burnt by one of the Prisoners: Thus, my Lords, undoubtedly is the Paper relating to *Lord Grey*, mentioned by *Stewart* in his Evidence.

My Lords, I am now coming to the great and only Foundation remaining to support this Bill, viz. *Noyes's* Examination: For if his History is not so believed, which is the Proof that was offered to show that Mr. *Kelly* was the Bishop's Secretary, and used to write for him; and particularly, That the Bishop dictated Three Letters, which were wrote in *Kelly's* Hand, and transmitted to *France* under Cover to *Monsieur Gardin de Fils*.

I am, as every Body must agree, the Bishop ought to be acquitted; and who is here, after this great Affair comes to be convinc'd by Positivity, is to be found or fill as the fact shall be strongly made appear.

I say that *Mr. Plunkett* is Cypher, and Mr. *Paradise* attests it to be his Hand writing.

When in Piece of Evidence was offer'd, People were at a loss to know why they intended to make it, and little thought that they should be so to be the Use of *John*, standing for the *Prisoner* in that Cypher, as show that the Letter dictated to *John* (one of the three before mentioned) should be dictated by the Bishop of *Rochester* to Mr. *Kelly*, and to *Mr. Paradise*. I shall take notice of this extraordinary Proceed-

ing when I come to consider these Letters: I shall only say now, That were Mr. *Plunkett's* Correspondence to be required, the Plot is in a very deep Nature; for he has had the Impudence to intimate the most malicious Aspersions against the greatest Men amongst us.

Three of his Letters were read out of Cypher, in Two of which *John* is named, that is Mr. *Kelly*, but neither Mr. *Kelly*, nor the Bishop of *Rochester* are allowed Place in his Cypher, and consequently were in an Affiliation with him: *John* is only spoke of by *Plunkett*, who is mentioning Domestic News, and in no other than might be every News-Letter that went by the General Post.

My Lords, in order to show that the Three Letters sent under Cover to Mr. *Gardin de Fils*, were Mr. *Kelly's* Hand-writing, when they were just thought was necessary, in his appearance before they proved to be the Bishop was convinced of them, they produced a Letter of the 1st of August, which a Clerk of the Post-Office found was sent at the General Post-Office.

To convince us in this Letter is Mr. *Kelly's* Writing, *Handwritten* the *Letter* left. To the left of his Knowledge it is Mr. *Kelly's* Hand, and so far from one owns, he never saw him write till after his Confinement, and then he found by him while he wrote two Letters, one to *Lord Townsend*, the other to Mr. *Drake*: These Letters were produced as the Bishop, and their first every Lord in the House is as good a Judge of the credit as the Messenger, who has lately been released into France, on what Account I cannot tell.

If Mr. *Kelly*, during his Confinement, counterfeited and disguised his Hand, then the Messenger's Evidence can't be of any Weight; and he was as usual, that every Person is equally capable of learning the Opinion of it, who sees the Three Letters.

The next Witness is *Adams*, who swears, he has seen him direct Letters, but can't tell how long he saw him write, nor how often.

The Person who contradicted this Evidence as to positive, to clear, and to concur in their Testimony, that no Doubt can arise upon it.

Mr. *Drake*, who he was shown this Letter, swears it is not like *Hand-writing*.

Mr. *Drake*, a Penman-maker, well vers'd and acquainted with the Writing, when he was shown the Letter of the 20th of August, and the Date of it, by the Counsel for the Bill (so that he could not know what Paper it was before him) swears, it is not his Hand-writing. When the Letter to *Drake* was produced, he declared, That was his Hand-writing. When another Paper was shown, (I think it was the Marriage Article he said, that was more like his Hand-writing than that of the 20th of August, but he did not believe it was wrote by him; and when the question was upon the Letter to *Lord Townsend*, he swore it was Mr. *Kelly's* Hand-writing.

Mr. *Parkinson*, who had Occasion to know Mr. *Kelly's* Hand, has sent him some Money, and received several Notes and Letters from him during this Translation, does agree with Mr. *Drake* in every particular, and most minute Circumstance; which is a clear and evident Proof, in the Letter of the 20th of August was not wrote by Mr. *Kelly*.

The Difference which they tell your Lordships they observe, between the Copy of the Letters is that of the 20th of August, and the others, That one is longer and firmer, the other wider and shorter: which is obvious to any body that will look on both, and is a Confirmation of their Veracity.

The Professor of the Plot might have given this better, and nothing been driven to the Testimony of a Messenger to support this great Foundation of their Charge. It is necessary what Search they have made Evidence of all Kinds; and as Mr. *Kelly* was educated in a College, he might easily have found credible Witnesses to that Point, if those Letters had been wrote by him.

In the Case of *Sinistrade* of Hands, when it has been the most clearly and positively proved, as on the Trial of Colonel *Adams*, it has been offered to be contradicted, that a Man should be contradicted on such Evidence, and the Attorney of that unfortunate Gentleman was unable for that Reason.

In *Sadley's* Trial, his Bankers swore, They said to pay Bills drawn by him in the Hand-writing they were shown, and so Persons could come and contradict them; and yet the Statute against him was a great Blame to his Reign. The Great Lord Chief Justice *Burn*, in the Case of *Croft*, refused to admit it, and the Lord Chief Justice *Burn*, on *Francis's* Trial follow'd that Example.

At present, give me leave to say, There is no Evidence that it is Mr. *Kelly's* Hand, and there is positive Proof that it is not—There is no Evidence under so equitable, just, and happy a Government, can we conceive a Man, in the Days of Liberty, on such insufficient Conjectures, to be made to swear to the Hand-writing of another.

They next produced the Three Letters, which, they would inform us were wrote by *Kelly*, and dictated by the Bishop, which were presented to me before, and which were shown by the Clerks of the Post-Office to have been stop going to France.

The Bishop desired to examine them relating to these Letters brought in, and would have known who took them out of the Mail, but he thought was proper for him to demand, since he seem'd to understand, That he question'd the ever having been in the Post-Office. But your Lordships would not suffer any Entail to be made on this Head, and would be inconsistent with the publick Safety, and necessary for the Defence of the Professor, to permit any further Questions to be ask'd in relation to this important Affair.

Their honest Gentlemen, the Clerks of the Post-Office, have deposed farther, That the Papers produced, are true Copies of the Originals drawn by them, so, at the same time, they confess, they never saw them after they had copied them.

They positively swear further, That the Originals were of the first Hand with the Letter of the 20th of August, the day after the battle upon Memory, never having mark'd any Letter in the way to know it, and use of them declared upon Oath, That he did not believe there could be such an Imposition on *Kelly's* Hand as could do so, and that the whole House agrees, That Hands may be counterfeited, so is to be done by the Men that write them.



They own, they never compared two original letters between the 20th of April, and 14th of August, tho' they may have kept a letter in Poff, without Prejudice to the Government, in order to be more certain in their decision.

Then, my Ladies, should this Bill pass, the great Masses will fall by the Day, since the House must have on the M. of the great Clerks. Mr. Lewis, who is long served in the Secretary's Office, tells us, that the great Masses and Books sold to be counterfeited, and in a most particular manner, by one *Brooks*, who exalted in such in this Art, that he has cheated away Persons, and has to far exceeded them, that they have not known his Copy from their own Original.

When these letters, thus ascribed, came to be read, they are in  
 Chap. 21 to that: and again depend on the Heads of a Decypant  
 before it can possibly be made Treasonable.











CXCV. *The Trial of Thomas Earl of Macclesfield, Lord High Chancellor of Great Britain, before the House of Lords, for High Crimes and Misdemeanors in the Execution of his Office May 6, 1725. 10 Geo. I.*

## THE FIRST DAY.

**A** FORTHWITH, the Clerk, the Lords being seated in their High Court, the Members for the House of Commons being in the Lobby, made for them at their Lordships Bar, Thomas Earl of Macclesfield, having a Sheet placed for him within the Bar, and his Counsel, viz. Mr. Serjeant Pembury, Doctor Stanger, Mr. Longard, Common-Serjeant of the City of London, Mr. Robinson, and Mr. Stanger, standing near him at the Bar, the Serjeant at Arms made Proclamation as follows:

*Serj. at Arms.* Oyez! Our Sovereign Lord the King Prithi's Charge, and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Serjeant at Arms again made Proclamation as follows:

*Serj. at Arms.* Oyez! Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of Themselves, and of all the Commons of Great Britain, against Thomas Earl of Macclesfield, all Persons concerned are to take Notice, that he now stands upon his Trial, and they may come forth in order to make good the said Charge.

Then the Clerk-Reader, by Direction of the Lord-Chief Justice King, Speaker of the House of Lords, read the Articles of Imprisonment, the Bill of Macclesfield's Answer, and the Replication of the House of Commons, as follows:

## ARTICLES

*Enrolled by the Clerks, Gentlemen, and Burgesses in Parliament assembled, in the Name of Themselves, and of all the Commons of Great Britain, against Thomas Earl of Macclesfield, an Abolishment of their Imprisonment against him for High Crimes and Misdemeanors.*

WHEREAS the Office of Lord Chancellor of Great Britain is an Office of the highest Dignity and Trust, upon the impugned and unscrupulous Execution whereof of the Honor of the Crown, and the Welfare of the Subjects of this Kingdom greatly depend: And whereas Thomas Earl of Macclesfield, in or about the Month of May, in the Year of our Lord One thousand seven hundred and eighteen, by the great Gifts and Favors of his most Excellent Majesty, was constituted and appointed Lord Chancellor of Great Britain, and thereupon took the usual Oath as to the Execution of that High Office, whereby he did former well, and truly to serve our Sovereign Lord the King, and his People, past and to come, the Lawes and Statutes of this Realm, and such other Oaths as have been accustomed; and the said Earl continued in this great Office until about the Month of January, in the Year of our Lord One thousand seven hundred and twenty-four, and in Right thereof was intrusted with the Nominations and Admissions to the Offices of Masters of the Court of Chancery, which Masters of the said Court are Officers of great Trust to serve the King and his People, and affianced to the Lord Chancellor for his Assistance in the due Administration and Execution of Justice in the said Court: And whereas his Majesty, upon the said Earl's being appointed to the Office of Lord Chancellor, did, in his Grace and Bounty, bestow upon the said Earl the Sum of Four thousand Pounds, or some other great Sum, and did likewise grant unto the said Earl, who was commonly called Lord Parker, Eleventh Son of a Barony of the said Earl, a yearly Pension of Twelve Hundred Pounds, payable out of his Majesty's Receipts of the Exchequer, during the just Lives of his Majesty and the said Lord Parker, determinable upon his Majesty's making a Grant to the said Lord Parker, in Possession of the Office of one of the Tellers of his Majesty's Exchequer, for the Term of his natural Life, which Office was, till this High Office, a Fifth hundred Pounds, or upwards, has been since granted by his Majesty unto the said Lord Parker for his Life, who in or about the Month of July, in the Year of our Lord One thousand seven hundred and nineteen, was duly admitted to, and took full Enjoyment of the said Office till the said Earl's Death, the Time of his deceasing being the first day of August 1725, and did not only enjoy the said Office, Fees, and Profits belonging to his Office, of a very great annual Value, but also did continue to receive an annual Pension of Twelve hundred Pounds, which his Majesty in or about the Month of June, in the Year of our Lord One thousand seven hundred and sixteen, had granted to him and his Wife, during his Majesty's Life, and did likewise receive from the Crown a further sum of Allowances of Four thousand Pounds, not many other Advantages: Yet the said Thomas Earl of Macclesfield, not being satisfied with this beyond ample Reward, not regarding the Obligation of his Oath, or the Duty of his high and important Trust, but entertaining wicked and corrupt Designs, to mislead and procure to himself excessive and enormous Gain and Profit, by divers unjust and oppressive Practices and Methods herein after more fully to be considered in the said Office of Lord Chancellor, did Illegally, Corruptly, and Extorsively take and receive to his own private Use the following, or some other great Sum of Money:

## ARTICLE I.

That Richard Gifford, Esq. having contracted with Sir Thomas Grey, One of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of five thousand Pounds, or some other great Sum of Money, the said Thomas Earl of Macclesfield, who he continued Lord Chancellor of Great Britain, and before the Admission of the said Richard Gifford into the Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively mislead upon, take and receive of and from the said Richard Gifford the Sum of Eight hundred and twenty Pounds, or

some other Sum of Money, for the admitting him into such Office, Master of the Court of Chancery, and to the Intent that the said Richard Gifford should have, Enjoy and receive the same, which said Pounds, and some other Sum of Money, he continued Lord Chancellor, and before the Admission of the said Thomas Earl of Macclesfield, being Lord Chancellor, in Pursuance and Execution of the said Oath and Agreement of the said Richard Gifford, did admit and receive the said Richard Gifford into the Office of one of the Masters of the said Court of Chancery, as a Surrender of the said Thomas Earl of Macclesfield, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## ART. II.

That the Office of One of the Masters of the said Court of Chancery, becoming vacant by the Death of Rowland Bromeley, Esq. one of the Masters of the said Court, the said Thomas Earl of Macclesfield, who he continued Lord Chancellor of Great Britain, and before the Admission of John Lightbown, Esq. into the said Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively mislead upon, take and receive of and from the said John Lightbown the Sum of Six thousand Pounds, or some other great Sum of Money, in Consideration of, and for the admitting him into such Office, and to the Intent that the said John Lightbown should have, Enjoy and receive the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court, and the said Thomas Earl of Macclesfield, being Lord Chancellor, in Pursuance and Execution of the said Oath and Agreement of the said John Lightbown, did admit and receive the said John Lightbown into the Office of One of the Masters of the said Court of Chancery, as a Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## ART. III.

That John Barret, Esq. having contracted with John Mills, Esq. One of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Nine thousand Pounds, or some other great Sum of Money, the said Thomas Earl of Macclesfield, who he continued Lord Chancellor of Great Britain, and before the Admission of the said John Barret into the Office of one of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively mislead upon, take and receive of and from the said John Barret the Sum of Eight hundred and twenty Pounds, or some other Sum of Money, for the admitting him into such Office, as a Breach of the said Court of Chancery, did, to the Intent that the said John Barret should have, Enjoy and receive the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court, and the said Thomas Earl of Macclesfield, being Lord Chancellor, in Pursuance and Execution of the said Oath and Agreement of the said John Barret, did admit and receive the said John Barret into the Office of one of the Masters of the said Court of Chancery, as a Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## ART. IV.

That Edward Cowley, Esq. having contracted with John Osborn, Esq. one of the late Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of his thousand Pounds, or some other great Sum of Money, the said Thomas Earl of Macclesfield, who he continued Lord Chancellor of Great Britain, and before the Admission of the said Edward Cowley into the Office of one of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively mislead upon, take and receive of and from the said Edward Cowley, the Sum of almost six hundred Pounds, or some other Sum of Money, for the admitting of him into such Office, as a Breach of the said Court of Chancery, did, to the Intent that the said Edward Cowley should have, Enjoy and receive the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court, and the said Thomas Earl of Macclesfield, being Lord Chancellor, in Pursuance and Execution of the said Oath and Agreement of the said Edward Cowley, did admit and receive the said Edward Cowley into the Office of one of the Masters of the said Court of Chancery, as a Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## ART. V.

That William Angell, Esq. having contracted with William Sayer, Esq. one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of his thousand Pounds, or some other great Sum of Money, the said Thomas Earl of Macclesfield, who he







and of their Accounts did appear; did follow the said fraudulent Practice to proceed and be executed without any Control or Check, whereby great Embarrassments have been made of the Suits Money and Effects, to their great Loss, in the Offices of several of the Masters of the said Court, who have not been able to answer and pay their respective Suits; coming upon their Accounts, in breach of the Trust reposed in him for the Preservation of the Estates and Effects of the Sutors, to the Dishonour and Discredit of the said Court, and to the great Injury and Defrauding of the said Sutors, in a Court of Equity, established for their Relief and Protection.

## A R T. XIII.

That *Flornard Dornor*, Esq. one of the Masters of the Court of Chancery, having embraced great Part of the Money and Effects belonging to the Sutors of the said Court, with which he was intrusted by the said Court, and disposed of the same for his own private Advantage, by Means whereof there became, and still continues a great Deficiency in that Office, to the amount of twenty-five thousand Pounds, or some other great Sum; and the said *Flornard Dornor*, having absconded, and for some time absented himself, Application was made to the said Earl of *Macclesfield*, then Lord Chancellor of Great Britain, to secure the Person of the said *Flornard Dornor*, and to take proper Methods for compelling the said *Flornard Dornor* to make Satisfaction to the Sutors for the Money and Effects which he had so embezzled, yet the said Earl, as by Application that a public Deficiency of the said Deficiency might lessen the unjust Gain he proposed to make to himself, by selling and disposing of the said Office of Masters of the said Court, neglected and declined either to secure the Person of the said *Flornard Dornor*, or his Estate and Effects, or to make a proper Enquiry into the said Deficiency: But, on the contrary, the said Earl, whilst he continued Lord Chancellor of Great Britain, did endeavour, by many indirect Practices, to conceal from the Sutors of the Court the true State and Condition of the said Office, as well with respect to the Effects of the said *Flornard Dornor*, as to the Debt due from him as the Sutors of the Court; and upon Motion made in the said Court of Chancery (after the said Earl knew that the said *Flornard Dornor* had so absconded) on behalf of some of the Sutors of the Court, to have their Effects transferred from the said *Flornard Dornor* to some other Matter, for the better securing thereof, the said Earl of *Macclesfield*, (in order to elude the Sutors of the said Court into a Belief that those Effects were safe, and thereby to prevent a public Enquiry) then sitting as Lord Chancellor in open Court, did say, That the said Parties need not be in haste; and did at the same time falsely and deceitfully declare, that when the said *Flornard Dornor* was only gone to take the Air in the Country, and that he would return in a little time, and all would be well, or to that Effect.

## A R T. XIV.

That the said *Flornard Dornor*, having towards Satisfaction of the Sutors of the said Court, assigned to *Henry Edwards*, Esq. (who succeeded him in his Office of Master of the said Court of Chancery) a Debt of Twenty-four thousand and forty five Pounds four Shillings, or some other great Sum, due from *William Wifley*, a Banker, to the said *Flornard Dornor*, to the intent that the Money received on Account thereof should be applied and disposed of as the said Court of Chancery should order and direct, the said *Thomas Earl of Macclesfield*, whilst he continued Lord Chancellor of Great Britain, for the unlawful Purposes aforesaid, without regard to the Interest of the said Sutors, by colour of his Office, did, in an unreasonable, clandestine, and unusual manner, authorize, direct, and establish a precarious and trifling Compromise with the said *William Wifley*, upon the Terms of the said *William Wifley*'s paying the Sum of Fourteen hundred fifty three Pounds, two Shillings and a Penny, and assigning Ten thousand Pounds, Part of a Debt of Twenty-two thousand and forty Pounds, together with three and five Pence, pretended to be due to the said *William Wifley* from *Edward Fowler*, or to that Effect, in Discharge of the said Debt; and to that End, upon the Report of *John Housley*, Esq. then one of the Masters of the said Court, without any Attendance order'd or had thereupon, and without Notice to the said Sutors, did, by a private Order not made in open Court, order the said *Henry Edwards* to accept of the said Compromise, in full Discharge of the said Debt, which said *Edward Fowler* was a Person insolvent, and has since absconded for Debt, and none, or but a very small Part of the said Ten thousand Pounds has been, or is ever likely to be received.

## A R T. XV.

That the said *Thomas Earl of Macclesfield*, whilst he continued Lord Chancellor of Great Britain, to carry on his corrupt and unjust Purposes, and to conceal the Deficiency that was in the Office of the said *Flornard Dornor*, did, in or about the Month of February, in the Year of our Lord, One thousand seven hundred and twenty, order the several Masters of the said Court of Chancery to bring in their Accounts of the Cash, Effects, and Securities in their Hands belonging to the Sutors of the Court, not with a Design of examining their Accounts, or securing the Estate and Effects of the Sutors, but with an intent to verify the said Masters, and thereby obliging them to contribute great Sums of Money towards satisfying the Demands that should from time to time be made upon the said Office; for which Purposes he the said Earl did at several Times represent, or cause to be represented to the said Masters, that if they refused to do, the Money and Effects of the Sutors would be taken out of their Hands, and the said Masters deprived of making any Profit of the same; by which Practices the said Earl, being then Lord Chancellor of Great Britain, by colour of his Authority, did persuade and induce nine of the Masters of the said Court of Chancery, to pay Five hundred Pounds each for the purposes aforesaid, several of whom paid the same out of the Money or Effects of the Sutors in that Office, but after such Payments, the said *Thomas Earl of Macclesfield* did not oblige the said Masters to deliver in their Accounts in pursuance of such his said Order.

## A R T. XVI.

That *Elizabeth Girty*, Widow, having obtained an Order of the Court of Chancery, on or about the seventeenth Day of March, in the

seventh Year of His present Majesty's Reign, made by the said Earl of *Macclesfield*, then Lord Chancellor, whereby *Henry Edwards*, Esq. one of the Masters of the said Court of Chancery, who was the said *Flornard Dornor*, Esq. in the said Office, was ordered to assign the Sum of one thousand Pounds, Part of the Sum of ten thousand Pounds, or other great Sum of Money, formerly paid into the Hands of the said *Flornard Dornor*, as a Matter of the said Court, and by the said Order mentioned to be then in the Hands of the said *Henry Edwards*, and the said *Henry Edwards* complying to the said Earl, that making Orders upon him to pay Money which had been received the said *Flornard Dornor* was a very great Hardship upon him; the said *Henry Edwards*, in regard he had not any Money or Effects in his Hands, unless such Demands as the said Earl of *Macclesfield*, being then Lord Chancellor, in further prosecution of his unjust and corrupt Practices, by colour of his Authority, endeavoured to prevail with the Masters of the said Court of Chancery, to make the said Sum of one thousand Pounds out of their Effects, by representing to them, that a Discovery of Deficiency in the said Office might occasion a Parliamentary or Public Enquiry into the Nature and Condition of their Offices, and thereby the Fortunes of the same, by reason of their having bought the said Offices, contrary to Law, which the said Earl then declared would be done, but themselves much more, or to that Effect, but the said *Henry Edwards* refusing to make the said Sum of one thousand Pounds, the said Earl of *Macclesfield* did order his Secretary, *Price Gougham*, Esq. to pay the said one thousand Pounds to the said *Elizabeth Girty*, or to that Effect, on or about the Month of July, one thousand seven hundred and twenty-four, did pay the same to *John Christopher Lusham*, for the Use of the said *Elizabeth Girty*, and the said Earl of *Macclesfield*, upon Application made to him by the said *John Christopher Lusham* for Payment of the said Money, did acquaint him, that he, the said Earl, had given Direction to his Secretary for Payment of that Sum; but at the same time declared to the said *John Christopher Lusham*, that he, the said Earl, believed this would be the last Payment he was like to receive out of the said Money paid into the Hands of the said *Flornard Dornor*, for the Refund thereof was in great Danger of being lost, by reason of the Deficiency in the Effects of the said *Flornard Dornor*, or to that Effect. Notwithstanding all which Proceedings, in this and several other Articles aforesaid, upon a Motion made in the Court of Chancery by the said *Thomas Earl of Macclesfield*, then Lord Chancellor, on or about the fifth Day of December last, in a Cause then depending between *John Harper*, Plaintiff, and *Thomas Goff*, and others, Defendants, relating to the Sums of two hundred and sixty Pounds, or some other Sum deposited in the Hands of the said *Flornard Dornor*, before his absconding, and which was then apprehended in great Danger of being lost, the said *Thomas Earl of Macclesfield*, then sitting in Court as Lord Chancellor, did publicly, falsely, and deceitfully declare, that he had heard that there was a Deficiency in the Office of the said *Flornard Dornor*, but that he, the said Earl, knew nothing of it, only as publick News, and that Effect; and thereupon did order, that the said *Henry Edwards* should examine in what Manner the said two hundred and sixty Pounds was deposited with the said *Flornard Dornor*, and whether there was laid to be a Loss of any Money deposited with the said *Flornard Dornor*.

## A R T. XVII.

That notwithstanding the said Earl of *Macclesfield* well knew that there was a very great Deficiency and Loss by the Failure of the said *Flornard Dornor*, and that the said *Henry Edwards*, his Successor, had been sufficient in his Hands to pay the whole Money due to the Sutors of the said Court, that had been received by the said *Flornard Dornor* on the Account; yet the said Earl of *Macclesfield*, being Lord Chancellor, did order to carry on his unjust Design of concealing the said Deficiency, and to prevent any publick Enquiry there might arise from the [all] Complaints of the Sutors of the said Court, did, from Time to time, as manifest and wilful Violation of the Trust reposed in him, make Order on the said *Henry Edwards* for Payment of the Money belonging to several particular Sutors, which had been lodged in the Hands of the said *Flornard Dornor*, in Obedience to which Orders several Sums were paid, without regard to, or Consideration of, the Propriety which the rest of the Sutors were intitled to out of the Effects of the said *Flornard Dornor*, whereby many of the said Sutors lost the Benefit of their proportionable Share, to which in Justice they were entitled.

## A R T. XVIII.

That the said *Thomas Earl of Macclesfield*, notwithstanding that he very well knew, and was informed that the Masters of the said Court did, or that it was in their Power, from Time to Time, and at their Pleasure, to dispose of any and every of the Masters' Effects belonging to the Sutors of the said Court, which were lodged with them respectively, and more particularly, that the Deficiency appearing in the Office of *Flornard Dornor*, Esq. one of the Masters of the Court of Chancery, was chiefly occasioned by him, the said *Flornard Dornor*'s having paid upon himself unjustly to dispose of and employ the Money and Effects belonging to the Sutors of the said Court, which were intitled in his Hands; and notwithstanding that, soon after the said *Flornard Dornor* became insolvent, it was represented and proposed to the said *Thomas Earl of Macclesfield*, then Lord Chancellor of Great Britain, in order to prevent for the future any Losses that might happen to the Sutors of the said Court, that the several Effects and Securities belonging to the Sutors should be placed out in such Manner, as that the Powers of disposing, employing, or in any manner trading with the same, might be first taken away from the said Masters, for the effecting of which said Design, a particular Method was laid before the said Earl, and it was also further proposed, that the said Masters should give some reasonable Security to answer the Balance of such Cash as they had from Time to Time, be in their Hands; and notwithstanding the said Earl was credibly informed, that the Sufficiency of some of the said Masters was very much suspected; yet the said *Thomas Earl of Macclesfield*, whilst he was Lord Chancellor of Great Britain, contrary to the Duty of his Office, and directly opposing to make unlawful Gain



Wish by the Diligent and Sale of the Officers of Matters of the said Court of Chancery, and in order to induce Persons to give him, the said Earl, a greater Power or Reward for their being admitted to the same, did not require or demand any Security whatsoever to be given by any of the said Masters, upon their being admitted to their Office, or at any other Time, and the said Earl with the same corrupt View and Intention, and to keep up the Price of the said Offices, totally neglected to enquire into the Accounts of the said Masters, and did fraudulently, unjustly, and in breach of the Trust reposed in him, permit and encourage the Masters of the said Court, to employ and traffic with large Sums of Money belonging to the Sutors of the said Court, and to make Interest therein for their own unjust Gain and Profit, and the said Earl, after such Proposal made to him, as aforesaid, or at any other Time, during his Continuance in the said Office did not take any Care that the Effects of the said Masters should be placed out in such Manner, as to prevent the Masters from trafficking themselves, or that the said Masters should give such Security as was proposed, by Means whereof great Deficiencies, to the Amount of many thousand Pounds, have been, through such Default of the said Earl, occasioned in the Offices of several other of the Masters, to the great Loss and Injury of the Sutors of the said Court.

A R T. XIX.

That whereas his most faithful Majesty, out of his fatherly Goodness to his People, did, in or about the Month of November last, direct an Enquiry to be made into the Accounts of the Masters of the said Court of Chancery, to the Intent that proper Methods might be taken for the Security of the Sutors of the said Court, the said Thomas Earl of Arundell, being then Lord Chancellor of Great Britain, and one of his Majesty's most Honourable Privy Councils, in order to obstruct the same, and to prevent a post-mortem Enquiry into the State and Condition of the Offices of the said Masters, in Breach of the several great Trusts reposed in him, did give Advice and Encouragement to the said Masters to add to supply each other with Money and Effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear in *seu* sufficient, and that, if they made a bold stand now, it might prevent a parliamentary Enquiry, or to that Effect; and do persuade several of them to make such Representations to their Circumstances to his Majesty, by doing a Subornation to that malicious Accusation delivered to the said Earl, to be laid before his Majesty, to the Effect following: (viz.) That they were able to answer the Money and Securities in their Hands, and were willing to pay the same to such Persons as were entitled thereto; although the said Earl knew, or had good Reason to believe, that several of the Masters were not then able to answer the Balance of their Accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of their Sutors in their Hands, some of the said Masters, according to such Advice and Encouragement given by the said Earl, did supply others of them with Cash and Effects, to make a bold show and appearance of their Ability and Readiness to answer the Balance of their Accounts.

A R T. XX.

That the said Thomas Earl of Arundell, whilst he continued in the Office of Lord Chancellor of Great Britain, in Breach of the Trust reposed in him, and contrary to the Duty of his Office, did, at several Times, borrow and receive of some of the Masters of the said Court, several great Sums of the Money belonging to the Sutors of the said Court, deposited in the Hands of such Masters, and did make use thereof for his own private Service and Advantage, as long as he had Occasion for the same.

A R T. XXI.

That the said Thomas Earl of Arundell, whilst he continued Lord Chancellor of Great Britain, did, in a illegal and arbitrary Manner, usurp the Power and Authority of Lord Chancellor, and of the Court of Chancery, beyond their lawful and just Bounds, and did arbitrarily and illegally assume to himself, as Lord Chancellor, and by virtue of his Office, an unjust and unlimited Power of disposing with, suspending and controlling the Statutes of this Realm, made for the Security and Preservation of the Estates and Properties of the Subjects of this Kingdom, to the great Oppression of the Sutors of the said Court, in Subversion of the Laws and Statutes of this Realm, in manifest Breach and Violation of the Rights and Liberties of his Majesty's good Subjects, and of his own most solemn Oaths, as Lord Chancellor of Great Britain; and more especially, when Francis Tyne, Esq. deceased, being seized, and possessed of a real Estate of the Value of Three Thousand Pounds per Annum, or thereabouts, and of other great annual Value, did, by his last Will and Testament in Writing, duly executed, in or about the Month of October, One thousand seven hundred and Seventeen, give and devise all his said real Estate to the Child his Wife was at that Time expectant with (if such Child should be a Son) for his Life, without Impediment of Waste, with Remainder to the first, and other Sons of the said Infant in Tail Male, and did devise, by such Will, especially nominate and appoint his said Testator's Wife, Rachel Tyne, to be the Guardian of all his Children during their respective Minorities, if the said Child so long continue a Widow, and the said Francis Tyne soon after died, leaving one Daughter, and the said Child, his Widow, with Child, after which Death, the said Rachel was seized of such Child, being a Son, afterwards named Francis John Tyne, in whose Right, by Virtue of the said Will, and of the Statute made in the twelfth Year of the Reign of King Charles the Second, in which, *As soon as the taking away the Court of Wards and Liveries, and Tenants in Capite, and by English Service, and Purveyance, and for having a more upon his Majesty in his shire; the said Rachel Tyne did lawfully come into her Care and Custody her said Infant Son, and the same to deliver to him, or was willing, and intended so to do, and to undertake the Management of his said Land and Tenements for his said Advantage, and to demand herself therein, without any Molestation, yet the said Thomas Earl of Arundell, being then Lord Chancellor of Great Britain, under Colour of his Office and Authority, did, by several Orders made by him in the Months of January and February, in the fifth Year of his Majesty's Reign, or in one of them, illegally and arbitrarily, and in direct Contravention of the Statute made in that behalf, remove and ex-*

clude the said Rachel Tyne, the Guardian of the said Infant, and also Tyne Nicholas, Esq. (a Person of good Substance and Ability, nominated by the said Rachel Tyne, to be Receiver of the Rents and Profits of the said Infant's Estate), and for that Purpose, who had given sufficient Security for the due Execution of her said Trust) from the Management and Beneficial Use of the said Infant's Estate; and did, by such Orders, unduly and injuriously remove and appoint Robert Daply, Esq. a Creature and Confidant of his own, and a Person altogether unfit and unqualified for so great a Trust, to be Receiver of the Rents and Profits of the said Infant's Estate, and to have a Salary for the same, with a Power to hit such Part of the said Estate, as was or should become unincumbered, with the Approbation of the said Robert Daply, although the said Rachel Tyne did expressly object unto, and oppose such Appointment of the said Robert Daply, and did insist to have the Benefit and exercise of her Right in that Respect, as the Guardian appointed and intrusted by her last Husband; and the said Robert Daply, after he was so admitted unto the said Receivingship, did for several Years receive the Rents and Profits of the said Infant's Estate, to the Amount of about Ten thousand Pounds, or other great Sum, and in his Lifetime did embezzle and convert to his own Use great Part thereof; and in or about the Month of November, One thousand seven hundred and twenty-two, died insolvent and indebted to the said Infant and his Estate, in the Sum of two thousand six hundred Pounds, or other great Sum, upon the Balance of his Account, to Pay whereof his Creditors have been satisfied or paid, and the said Thomas Earl of Arundell, in further Abuse of his Power, and in Contempt of the Laws and Statutes of this Realm, when upon Debate of the Matter in the said Court of Chancery, before the said Earl, being then Lord Chancellor, in the Month of January or February, in the fifth Year of his Majesty's Reign, or at one of them, it was insisted upon, in Behalf of the said Rachel Tyne, by her Counsel, of great Ability and Experience in the said Court, that such the Proceedings of the said Earl, as Lord Chancellor, were a reversing the Power of the Court of Wards, and were not supported or warranted by any Precedent of the Court of Chancery, by the said Thomas Earl of Arundell, when sitting on the Court as Lord Chancellor, did not only pervert in such his Appointment of the said Robert Daply, but did also arbitrarily, and in Defence of the said good and beneficial Statute, by and declare, in open Court, that then he would make a Precedent in that Instance, or be the said Earl, declared and exprest himself to that Effect; which Addings, Proceedings, and Declarations of the said Earl, have been and were not only very injurious and prejudicial to the Right and Interest of the said Rachel Tyne, as Guardian, and to the great Damage and Loss of the said Infant, Francis Tyne, and a notorious Violation of Property, but were also a dangerous Exercise of illegal and arbitrary Power, to the Subversion of the Laws and Constitution of this Realm, in manifest Breach of his Oath as Lord Chancellor, and in great Abuse of his Authority.

And the said Knights, Citizens, and Burgesses, by Petition, leaving to themselves the Liberty of exhibiting, in any Time hereafter, any further Articles, or other Accusation or Impeachment against the said Thomas Earl of Arundell, and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proof to all and every the aforesaid Articles, and to all and every other Articles, Impeachment, or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, that the said Thomas Earl of Arundell may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Trials, and Judgments, may be thereupon had and given, as are agreeable to Law and Justice.

The Answer of Thomas Earl of Arundell, to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament aforesaid, in the Name of himself, and of all the Commons of Great Britain, as Maintainers of their Liberties and Privileges, from the High Crimes and Misdemeanors, justified to have liberty in him committed.

THE said Earl, being to himself all Advantage of Exception to the said Articles, and of not being prejudiced by any Words or Want of Form in this his Answer, and also living to himself all Benefit and Advantage of the Act for the King's most precious, general, and free Pardon hereon after-mentioned, and all Rights and Privileges belonging to him as one of the Peers of this Realm, for Answer to the said Articles Gith, That he, having for several Years executed the Office of Chief Justice in the Court of King's Bench, his Majesty, of his Royal Grace and Favour was pleased, the tenth Day of April, One thousand seven hundred and fifteen, to advance the said Earl to the Dignity of a Peer of this Realm, and created him Baron of Arundell, and, in regard to his Circumstances at that Time, was further pleased, for the better Support of that Honour, to grant to the said Earl the Pension of Twelve hundred Pounds per Annum, in the Articles mentioned, payable at the Receipt of the Exchequer; and his Majesty was then likewise pleased to declare his Royal Intention of giving to the said Earl's only Son, George Parker, for his Life, an Office of considerable Profit, whose a proper Opportunity should offer, that in the Beginning of May, in the Year One thousand seven hundred and sixteen, the said Earl was, by his Majesty's great Grace and Favour, appointed Lord Chancellor of Great Britain, and was sworn before his Majesty in Council the fourteenth Day of that Month, when the following Oath, being the usual Oath of Lord Chancellor, was administered to him, (viz.)

YOU shall swear, That you shall well and truly serve our Sovereign Lord the King, and his People, in the Office of Chancellor of Great Britain, and you shall do Right to all Manner of People, Poor and Rich, after the Laws and Usages of this Realm, and may if you shall counsel the King, and his Council, you shall maintain and keep it, and you shall not know nor follow the Hurt or Offences of any Persons, or that the Rights of the Crown be decreed or by any Means be lost; forth as you may, and if you may not let it, you shall make it clearly and expressly known to the King, with your true Advice and Counsel; and that you shall do and purchase the King's Profit in all that you may, all which you shall do to the best of your Skill and Knowledge.











*Drewor*, then one of the Masters, and the said Money having been brought before the said Master the twenty-fourth Day of December, One thousand seven hundred and twenty-one, and the Treasurer, having attended to *Justice*, but the Consequences not being then examined, though long before approved, a Motion was made in the Court of Chancery before the said Earl, on the fifth Day of December last, that all Parties might execute the Consequences, and the two hundred and sixty Pounds be paid to the Plaintiff, towards Satisfaction of a Demand he had out of the Estate of the said *Hopier*; and those that were to have the *Refund* of the said *T. Harper's* Estate, and that they were always ready to join in the Consequences, if the Purchase-Money were applied to discharge the rest of the Estate, that they were apprehensive of a Deficiency of Mr. *Drewor's* Estate, and therefore desired they not the Plaintiff ought to be Suffered by such Deficiency, the Delay has not been occasioned by the Purchase, and not by the Plaintiff, and therefore should execute the Demands, unless upon Payment of the Money to the Plaintiff, and discharging the rest of the Estate then was; and thus being the first Time that any Question relating to Mr. *Drewor's* Deficiency had been laid before the Court, by any of the Sutors, the said Earl took Notice of its being so, and believes he might expect himself to this Effect, That he had indeed heard of the said *Drewor's* Deficiency, but that it had never yet come judicially before him, upon Complaint of any of the Sutors of the Court, and further declared, That if there should be any Deficiency in his Office, several Circumstances had concurred thereto, as *Wife's* the Banker's Stoppage Payment, greatly indebted to him, *Pauler's* going away in *Wife's* Debt eighteen thousand Pounds, and upwards, after a Verdict and Judgment at Law, and *Pauler* in actual Execution for it; and that, as he had heard, *Wife* had then lately brought an Action of Ejectment against the Plaintiff, and recovered a Verdict against him for the like Sum; and how all these Matters would at last come out, the said Earl said he did not know, or he expected himself to that Effect, and no other; and thereupon ordered, that it should be referred to Mr. *Edwards*, to examine whether the said two hundred and sixty Pounds was deposited with Mr. *Drewor* for the Benefit of any particular Person, and whom, and what was the Occasion of the Delay, that the said Consequences were not executed, and the said two hundred and sixty Pounds, Purchase-Money paid out before the Year one thousand seven hundred and twenty; and whether there was likely to be a Loss of any Money deposited with the said Mr. *Drewor*, and that upon the Master's Report such further Order should be made, as should be just; and the said Earl hopes the said Order was very proper and necessary, and takes the Liberty of recommending to your Honours, That what was after the Accounts of the Masters had been laid by the said Earl before the Lords of the Council, and had been for some Time under the Consideration of the Judges and others, appointed by His Majesty to inspect the same.

XVII. To the twentieth Article the said Earl said, That he never endeavoured to conceal the Deficiency occasioned by Mr. *Drewor's* Failure, but as the said Earl was under a full Persuasion, that the same would all in due time be made good, and as Mr. *Drewor's* Effects were coming in by degrees, and no Application was made to him by any of the Parties concerned, to pass any, or any Release upon the Payments, he did not think it incumbent upon him, in Office, to make a Declaration of an Average. And the said Earl said, That he does not know that any Order was made by him for Mr. *Edwards* to pay any Money that had been lodged with Mr. *Drewor*, except the Order aforementioned, in the Case of *Chap*, but believes several Orders have been made by the Court for that Purpose, and that the said Mr. *Edwards*, under a full Persuasion that the whole Deficiency would be made good, paid out the whole Sum so ordered, so far as his Money then in his Hands would extend.

XVIII. To the twentieth Article the said Earl said, That he never knew how the Masters kept or disposed of the Money and Effects belonging to the Sutors of the Court, and as he believes, that after Mr. *Edwards's* Failure, the then Lord Chancellor, he knows that after Mr. *Drewor's* misfortune, the Earl thought of several methods to prevent any Inconvenience upon the late Accident for the future; but they had both the same misfortune, not to bring any of them to such perfection, as to return to put them in practice.

That several Proposals were made to him by the Parties he consulted upon that Occasion, but none that he believes, it will be held criminal not to have then established; some things were proposed that he thought impracticable, some inconsistent, some inconsistent with that complete Regulation he hoped to make; the Objects he proposed to himself, was to provide for whatever Deficiency might happen in the Office, late Mr. *Drewor's*, to secure the Sutors from any future Loss, and to make several Regulations relating to the Office of the Masters, and he thought these would be best done together, not had he perfected the Scheme of any one of them to his own Satisfaction; he remembers no Proposal, that he thought would take in totally out of the Power of the Masters, to dispose of the Securities or Effects, or effectually secure the Cash. The said Earl admits, that he did not demand any Security to be given by any of the said Masters at the time of their Administration, because it had not been done by his Predecessors, who were much wiser Men than himself, nor was he so much as asked by any of the Parties interested to do so; as to what the said Earl did with relation to the Accounts of the said Masters, he hath already testified, and said, That he gave no Permission nor Encouragement to the Masters of the Court, to employ or traffick with the Sutors Money further than Gain or Profit, he owns, that with respect to the securities in the Hands of the Masters, he made no general Order, and thinks it the fit material, because, notwithstanding what is alleged in the Cloze of this Article, he believes all the said Masters did, in December last, possess all the Securities in their Hands, and the Court of Chancery hath since secured the same for the Benefit of the Sutors.

XLIX. To the twentieth Article the said Earl said, That upon great Consideration of Mr. *Drewor's* Deficiency, and of the Danger there might be of further Inconveniences, with relation to the Money and Effects in the Hands of the Masters, and of several Disputes and Differences that had arisen in the Court of Chancery, and of some Applications of the said

Masters, for establishing them in their just Rights, and of some Proposals of the Masters, which the said Earl thought ought to be referred; he was convinced, that the same was a work of too great Consequence for him singly to attempt, and being highly desirous of his most Excellent Majesty's Goodwill to his People, did presume humbly to beseech his Majesty, as the Fountain of Justice, to depart from of his most Honourable Privy Council, to take the Matters aforesaid into Consideration, as to the establishing such Regulations, as might tend to the Honour of the High Court, and to the Advantage of his Majesty's Subject being Sutors; which Request, His Majesty, out of His wondrous Goodwill, pleased to receive very graciously, and named several Lords, and others, his honourable Person of His Privy Council, to be a Committee, to take the same into Consideration; and pursuant to His Majesty's Command, said Committee met, and began with the Accounts of the said Masters, wherein the said Earl begs leave to appeal to such of your Lordships, who attended in that Committee, whether he did not contribute, to the state of his Power, to have every thing done which the said Committee thought proper. And the said Earl said, That he made all such Orders as by them judged requisite, and so pressed the Execution thereof, that only the Accounts of all the Masters then in being were brought in, and the Securities in all their Hands, and the Cash of most of them actually lodged in the Bank of England, and therefore the said Earl greatly surprised, to find himself charged with obstraining the same, and their Accounts, which he had thus desired might be taken, and contributed to the taking of them with all his Power. And the said Earl said, That he never thought of preventing a parliamentary Enquiry, any more, than by making it unnecessary, and procuring to the Sutors a full Redress of all their Grievances, and redressing whatever he found any, and that he looked upon to be his Duty, and best leave to say it here and now, in answer to all the several Informations of that kind contained in the Articles.

And the said Earl further said, That while the said Accounts were being, every one of the said Masters declared, over and over, that they were Effects sufficient to answer their whole Accounts, and the said Earl fully believed the same to be true, and as all of them, that he saw (which he believes were all, or at least all but Mr. *Kyneghan*) had told the said Earl, that they were able to answer their Accounts, and when they brought their Accounts to the said Earl, for him to say before the said Committee, Mr. *Haynes* had wrote under his Account some Declaration to the Effect, and some others of them, as he remembers, had made use of some other Expressions, which he thought not so proper, and false, as he believes, had wrote nothing (but he cannot discontinue the Perfect) and the said Earl thinking, that when the said Accounts came to be laid before the Committee of Council by him, it would be proper that the same Time should be declared to the Committee, which had been said to him singly, he advised them all to write the same Words under their Accounts, and did tell them, in great Sincerity and Friendship, that as a Time when so many Men's Mouths were open against him as *Edwards*, it would be sufficient, as he then believed them to be, but never thought of a Contrivance to have them Decentally appear, or firm what they really were not, and he says they did then withdraw to make the Subscriptions, or at least to many of them whose Accounts were then ready, and soon all delivered them to the said Earl, who carried them with him to the Committee of Council, whether he was then going, without looking upon them; but upon reading them at the Council, it was observed that they had not all used the same Words, having varied considerably, but what any of the Subscriptions were, he cannot take upon him to set forth.

And the said Earl further said, That a subsequent Order being made by the said Earl, for the said Masters to produce their Securities, and that Cash, before the Perfect appointed to inspect their Accounts, they made great Complaint, that so many hundred thousand Pounds should be required at so short a Warning, and some of them saying, that though they had Effects sufficient, and could raise the Whole if they had a little Time, desired the said Earl to allow them further Time for that Purpose; but the said Earl said, That he required them to better themselves, and raise it immediately, telling them, that since they had Effects to give Security, they might find Friends to furnish the Money; and believe he did say, that some of their own Estates might perhaps be able to let them have Money till they could raise it another Way.

But if any of them did supply others with Cash or Effects to produce only to make a false Show and Appearance of their Ability, and Readiness to answer the Balance of their Accounts, the said Earl knows nothing of it, and in sure they had not the least Encouragement from him for so to do.

XX. To the twentieth Article the said Earl said, That it never entered into his Thoughts, to make use of, nor did he ever make use of any of the Money belonging to the Sutors of the Court for his own private Advantage; but believes that in December One thousand seven hundred and twenty, having Occasion for the Sum of One thousand five hundred Pounds, and asking his Secretary, Mr. *Guthrie*, whether he could lend him the same, he said he could not, but would procure it for him; and accordingly borrowed the same from Mr. *Guthrie*, one of the Masters of the said Court, and the said Earl gave his own Note for Payment thereof to the said Mr. *Guthrie*, and in February following repaid One thousand Pounds, Part of the said principal Sum; but in the same Month of February, One thousand seven hundred and twenty, upon a fresh Occasion, borrowed again Part of the said One thousand Pounds he paid before, his Note or Notes were given for the Payment thereof, and some Time after the said Earl ordered the whole Money borrowed of the said Mr. *Guthrie* to be paid, with all the Interest due for the same; and the said *Guthrie* received the Principal, but would not be prevailed upon to take the Interest, or any Part thereof; and the said Earl said, That all the said Money was repaid within the Compass of a Year after it was borrowed; and the said Earl declares, That he never received or borrowed any Sutors Money whatsoever of any of the Masters of the said Court, except as aforesaid for such.



















possibility of Security, mentioned in his Lordship's Answer, yet he might have been answered upon Interrogatories to disclose his Facts.

The Solicitor might have had some Writing to have used their Diligence in discovering his Affairs, and procuring any Concealment of it.

Nothing of this done, but on the contrary, upon an Application by one of the Sutors to have his Money transferred to another Master, from an Apprehension of Loss, after *Dumex* had absconded himself from the Office, he was informed from the Bench, that his Fears were silly, and that Master only goes to take the Air, and that all would be well.

From this I find every thing was carried on with the greatest Privacy between his Lordship and the Masters.

Orders were made for the Payment of Money out of that Office, as if it had been clear from all Suspensions of Loss, contrary to that Rule of Equity, which is a fundamental Principle of a Court of Equity, That where several Persons have Demands out of a Fund like to prove deficient, they must stand in proportion.

And adding, where that Fund is in the Hands of private Persons to be paid by them, it may be intelligible to talk of judicial Knowledge, and an *ex officio* Declaration of an *Assurance*.

Yet when the Fund is in the Hands of the Court, the Payment is to be made by that Court, and the Loss sustained while the Court was paying out of that Fund.

Every Knowledge of such Loss is judicial, and the Court ought in Justice, by what meanssoever the Knowledge of that Loss comes before the Court, to direct the Payment in proportion only.

There is but one Article more that I shall take particular notice of, whereby his Lordship is charged with endeavouring to disappoint his Majesty's gracious Intent of having the Accounts of the Masters, and the State of their Office enquired into.

His Lordship, to put a stop to his Duty as Chancellor, perused several of the Masters, to make a false Appearance of Satisfaction, and show of Readiness to pay over the Money and Effects of the Sutors of the Court in their Books.

This was not only a Breach of his Duty as Chancellor, but a great Violation of that high Trust reposed in him as he was a *Præse-Cancellarius*; and if his Lordship did at the same time in Counsel men to prosecute every one taken then, that is a very great Aggravation of his Crime.

Such, my Lords, is the Nature of the Charge which the Commons have exhibited against the Earl of Mansfield, which they are able to make good by plain and clear Proof.

Mr. William Blackstone, my Lords, The Gentleman who here spoke upon this having fully opened to your Lordships the general Charge against the Earl of Mansfield, it is my Province, and that of the Gentleman who is to speak after me, to open the Evidence we shall produce to make good the several Facts contained in the 5th, 6th, 7th, 8th, and 9th Articles; but as the ninth differs very much in its Circumstances from the other four, I shall say nothing to that Article, but leave that to the Gentleman to whom the opening of those Articles is likewise directed.

My Lords, We shall shew you, that notwithstanding the many great and singular *Concessions* bestowed upon this Earl by the boundless Kindness of his Majesty, and all that his Majesty conferred upon himself and his Family, the Depravity of his high Office, and the great Trust reposed in him, have been prejudicial, in order to frustrate a *beneficial* *Appoint* for a useful *Govern*.

That I shall now particularly proceed to these, by mentioning to your Lordships, in the first Place, the several Grants which the Earl, in his Answer, has used to have received; and, afterwards, by opening the Evidence the Commons will produce, to make good their Charge contained in the 5th, 6th, 7th, and 8th Articles above-mentioned, which relate to the illegal and corrupt Admission of four Masters in Chancery.

The first beneficial Grant the Earl, in his Answer, now to have received from his Majesty, before the House of Peers was conferred upon him, was 1700, a Year granted to him and his Adjoint, during the Life of his Majesty, or at about Year 1716; in the next Place, that in the Year 1718 he was created Lord High Chancellor of Great Britain, and that at the same time, his Majesty, out of his Royal Bounty, did bestow upon him 12000*l*. and likewise granted to his eldest Son, now Lord Parker, an annual Pension of 1200*l*. payable during the joint Lives of his Majesty and the said Lord Parker, but determinable whenever he should be put into Possession of one of the Offices of a *Teller* in the *Exchequer* for Life, and which Office he has since obtained; and next, in 1701 all these great and beneficial Grants, the usual Salary of 1200*l*. a Year out of the *Treasury* Office, the other great Profit and legal Privileges of his high Office, the Earl came to have had an Allowance of 4000*l*. a Year. As these were all Marks of the greatest Honour, Affection, and Confidence from his great and numerous Benefactors, by which they ought to have produced in him all faithful Returns of Gratitude, by a right and impartial Execution of the Trust reposed in him, to the Honour of his Majesty, and the Good and Welfare of his Subjects.

But, my Lords, The Thrill of Gain was predominant, and in pursuance of that, he did, in a manner highly derogatory to the Dignity of the Office he then bore, illegally, erroneously and at risk, by himself and Associates, erect and enter for the Sale of Officers of Justice in Chancery, which Offices concern the Administration of Justice; and, in the first manner, did take very great Sums of Money for their Admission into the said Office.

I shall take notice that his Lordship, in his Answer, does not deny to have taken all the several Sums laid to his Charge by the Commons, on the Admission of the Masters, as stated in the Articles of Impeachment, to the respective Offices, but alleges that he took them as *per* *se* on only, and not as *per* *se* on only, and that such as had been paid on such Occasions, but, my Lords, will shew you, that the Sums of Money taken by him were laid in the manner alleged in the Articles; and, by the Evidence I shall now open, your Lordships will see how very easily on this Matter will appear from that which the Earl would refuse in his Answer. I shall begin by opening the Evidence to the 5th Article, which relates to the illegal and corrupt Admission of Mr. William Kynoch into the Office of a Master in Chancery, on August, 1721. We will shew you, that before Mr. Kynoch was admitted to be a Master, he was advised by Mr. Rogers (with whom he had then consulted for the Sale of his Office

for 6000*l*.) that the best manner would be to expect 6 or 7000*l*. for his Admission; upon this happened Mr. Rogers's Secretary, Mr. C. Attorney, [who was then the Master of the Chancery] to be consulted, and to be recommended to the Chancellor for that Office, and told Mr. C. Attorney, that if it was necessary, he could then give his Lord Rogers's Recommendation, the Secretary being one of the 7 at another Master had given 1200*l*. Money to the said Chancellor, &c. &c. who, after that, offered him 6000*l*. for his Admission. He could not then say nothing to the Lord Chancellor than 1200*l*. and being afterwards asked by the Person who was to pay the Money, what sum would be paid, answered, it must be 1200*l*. Money, nothing in form, was to be asked, for that [Mr. C. Attorney told Mr. Rogers] Money was one of the best Offices, being full of *Advers* and *Severities*—Money and *Severities*, my Lords, the Property of the Sutors of the Court;—and how good the Masters making Use of such Money for their own Profit has been, in order to *replenish* their own for the very great Sum paid for their Office, is now too generally felt by Numbers of *Beneficial* *Persons*, and *several* *Sutors*. Mr. Rogers, in answer, seeing no Possibility of Admission without paying the whole Sum of 6000*l*. Money, complied at last, sent the Money to Mr. C. Attorney, who afterwards paid them to the Chancellor; and the next Day Mr. Kynoch was admitted and sworn a Master.

I come next to open to your Lordships, the Evidence which we shall produce to make good that Article, which relates to the illegal and corrupt Admission of Mr. Thomas Basset to the Office of a Master in Chancery.

Mr. Thomas Basset, about May, 1723, bargained with Mr. Basset, then a Master in Chancery, for the Sale of his Office, at the Price of 7500*l*. The next thing to be done, was to apply to Mr. C. Attorney, which in due obedience he recommended to my Lord Chancellor for his Office, Mr. C. Attorney did recommend him, and told him, that the Lord Chancellor had no Objection to him, that he knew his Father, and should be glad to do it; but the Chancellor, however, made up a Proposition of a *Præse*, as it is called it, and it is, he asked would come up with him, that his Brother, then a Master in Chancery, and Mr. Gifford would easily chalk out a *Præse* for him. Mr. Basset, my Lordship, being consulting these Gentlemen, offered 1000*l*. Money; Mr. C. Attorney said his Head, and said, he did not care to go to the Chancellor with an Offer of that Sum, that *was* had been given, and he hoped Mr. Basset would not lower the Price. Mr. Basset gave some Reasons why he hoped Lord Mansfield would accept the 1000*l*. Money, and said he did not care to give more; Mr. C. Attorney again told him, he did not care to go with the Offer, upon which Mr. Basset said, that what had been given by other Masters, C. Attorney told him 1200*l*. Money.

However, Mr. Basset again desired he would go to the Chancellor, and said that if the Sum he had offered would not do, he would give 1200*l*. C. Attorney desired to be excused from going on that Matter, and said my Lord did not love Bargaining; and that if Mr. Basset would give 2000*l*. more, he might get the Office, for that if the Chancellor should refuse the Sum, he would not go with any other Offer. Upon this, my Lords, Mr. Basset, at last, consented to give the 2000*l*. Money; and this will appear to have been what the Lord Mansfield calls Mr. Thomas Basset's *first* *Gift*. The Money was paid to Mr. C. Attorney, who paid them to the Chancellor, for which Mr. Basset was admitted into his Office, which appears to have cost him 2075*l*. and that very Sum, upon the making up of his Accounts, appeared to have been wanting in his Office, for the making up of his *Balance* due to the Sutors of the Court. I shall take Notice to your Lordships, that the Lord Mansfield, as in his Answer, alleges, that the said Kynoch and Basset pretending they were disabled from answering to the Sutors of the Court, to much Money as he had taken from them at that respective Admissions, the said Earl did, before the Impeachment, pay into the Court of Chancery, for the Use of the Sutors of the Court, the two several Sums received by him from Mr. Kynoch and Mr. Basset; but, my Lords, that we shall shew to be a *great* *Article* in the *Charge*, for we shall prove the said Sums were not repaid by him till after the Impeachment, and after they had, by Affidavit, charged the Payment of their Sums as one Cause of the *Deficiency* in their Offices.

I come next to shew the *Manner* in which Mr. Francis Ellis was admitted to his Office of a Master in Chancery, which happened in February, 1723, upon the Death of Mr. Feltwell; we shall shew your Lordships, that Mr. Ellis applied personally to the Chancellor, who told him he would receive him in a different manner from any Man having, in two or three Days after he was applied again to the Earl for the Office, and that did mention a Sum of 4 or 5000*l*. my Lord told him, Mr. Ellis and I could not make Bargains. So, my Lords, Mr. Ellis after that went to Mr. C. Attorney, and told him of his Intention to give the Chancellor 5000*l*. Mr. C. Attorney desired him to make a *Præse*. And, in pursuance of this Advice, Mr. Ellis did, on or about the first of Feb. 1723, give to the said Lord Mansfield his usual 5000*l*. Money and 2000*l*. in *Bank* *Notes*, signed up in *Dan* *Boyle*, which he lost up to my Lord by Mr. C. Attorney, who left it into his Lordship's hands, and was well, and within a Day or two after Mr. Ellis was sworn into his Office.

I would observe upon this, That a *Præse*, which might have been honestly made, and as honestly received, had needed no such *first* *Conveyance*. But, my Lords, the Sums of the Court now begin to be swamped by the Appropriations of their *Gifts*, and the Voice of the People to reclaim against that *gross* *abuse* of admitting Masters in Chancery; and therefore, I presume, my Lords, Privacy was now come to be thought necessary, that the Secretary himself, the concern in the *Transaction*, was kept ignorant of the Contents of the *Præse*.

I come next to open the Evidence we will produce, to prove the illegal and corrupt Admission of Mr. Albert Thorne to be a Master in Chancery, as it is laid in the 7th Article. He bargained with Mr. Basset to be got of *Adapt* *last* *paid*; and, my Lords, notwithstanding that the Earl of Mansfield alleges as his Answer, that he was informed by Mr. Gifford and Mr. John Basset, that there was like to be an *Admission* in that Office, we shall shew your Lordships, that before Mr. Thorne's Admission there was a great *Confusion* in it; and that his Lordship must have *forgot* *himself*, when he says he was acquainted by these two Masters, that there was like to be no Deficiency in that Office.

That, my Lords, the Commons will produce to shew, That, notwithstanding



withstanding the very great Losses already sustained by the Suitors of the Court of Chancery, from the great Price given by the Masters for their Offices, the great *Congress* then in that Office, and in which there is a *Dispossession* of more than 10,000 l. yet, in the same *unhappy* *Parliament* of *Gains*, he did admit Mr. *Mars* *Thynne* to the Office of a *Master* in Chancery for the Sum of 5000 *Gains*. The manner of it was this, my Lords.

Mr. *Thynne*, upon Mr. *Barnard's* Death, applied to Mr. *Cottingham* about that Office, and the Price agreed upon between them was 5000 *Gains*; with this Agreement Lord *Macclesfield* was acquainted, and seemed to agree to it: But afterwards, upon a Report being spread, that Lord *Macclesfield* designed to give the Office to Dr. *Sayer*, Mr. *Thynne* (well advised as he is) applied to Lady *Macclesfield*, and, after many Arguments used to persuade her to write to my Lord in his Favour, produced at last 5000 *Gains* in Best-Novel, which had their desired Effect; my Lords wrote, and Mr. *Thynne* in two or three Days was admitted to his Office.

My Lords, I will make this Remark upon this Transaction, That the taking back an extravagant Sum of Money for an Office, in which there was like to prove a great Deficiency, was so far from being thought *blameworthy* even by the Earl himself, that it looks as if *that* Way was necessary to be found out, to hide this Transaction from the *Society*, who had had the first Hand in it: And, to take all cause of Suspicion away from him, he was ordered to be sure to take no Money from Mr. *Thynne* on account of his Admission, which he observed religiously, that I think he scrupled even to his own Face.

Before I conclude, my Lords, I must take Notice of an Expression in the Earl's Answer to the two last Articles I have mentioned.

That, of the Money he received from Mr. *Edle*, he retained no more than 1850 l. and, of that received from Mr. *Thynne*, no more than 3000 l. By this, I presume, the World is to believe, the Earl made an immediate Restitution of the Remainder of the Money: But, my Lords, we will then see, that no Money was returned to Mr. *Edle* till November last, a Time that he stood in need of it to flow and produce his Balance; nor to Mr. *Thynne*, till October last, at which Time it was evident an *exorbitant* Sum must be put to the *excessive* Practice of *Lord* *Tobias* with the *Barons* *Murray*, and which of Consequence would put those two Masters out of a Possibility of *reimbursing* themselves the great Sums so lately paid for their Offices.

My Lords, the next Thing we shall prove will be, That in all these Transactions Mr. *Cottingham* has acted by my Lord *Macclesfield's* immediate Direction; and when we have proved that, and the several Facts I have now opened to your Lordships, I doubt not but you will be of Opinion, that we have fully made out the Allegations in the Vth, Vith, Vllth and Vllth Articles, in their utmost Extent; and that the said Earl has taken the several Sums and his Charge, *illegally*, *corruptly*, and *unlawfully*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Statutes of this Realm.

Mr. *Debbington*. My Lords, I am commanded by the Commons to assist the Gentleman who spoke before me, in making good the Vth, Vith, Vllth Vllth and Vllth Articles against the Earl of *Macclesfield*, which relate to his taking Money for Offices.

The Commons look upon this Part of their Charge as a necessary Foundation of the whole, because from this infamous Deceit of Gain have sprung all the Evils and Mismanagements charged upon the Earl in the rest of the Articles.

The Charge against the Earl in four of these Articles is in short this, That he took several great Sums for the Admission of several Persons into the Office of Masters in Chancery; and that he took them *illegally*, *corruptly*, *illegally*, in Breach and Violation of his Oath as Lord Chancellor, and of the Trust in him reposed.

My Lords, these Facts have been so clearly stated to your Lordships, and the extensive and corrupt Manner in which they were committed, in Breach of his Oath as Lord Chancellor, is so strongly intimated by the Gentleman who spoke before me, that I shall not trouble your Lordships upon these Heads.

As to the Illegality of such Practices; that has been laid before your Lordships by the learned Gentleman who opened the general Charge; and, I do not doubt, will be further explained by other Gentlemen to your Lordships Satisfaction: But when the Earl is pleased to say, in his general Answer to all these Articles, "That he hopes receiving Presents on such Occasions is not criminal in itself, or by the Common Law of this Realm, and that there is not any Act of Parliament by which the same is made criminal;" Though I have not had the Happiness to have been bred to the Professions, I must beg Leave to remind him of the Statutes of Richard II. and Edward VI. to see the Statute Law: And by all that I have ever heard, or can learn, the whole Tenor and Meaning of the Common Law does disapprove and condemn such Practices, (though possibly it has not been an adjudged Case). And the Statutes I have mentioned are one Proof of such meaning of the Law, to me, at least, who have always looked upon them to be Commands and Declarations, made from Time to Time to explain and enforce such Constructions.

Putting up Offices of Justice to Auction, my Lords, is repugnant to the Duties of plain Justice, and consequently to the whole Spirit and Spirit of the Common Law of this Realm, which is founded upon Reason, and in the Repugnance to the latent and Meaning of the Law of the Land, lies this Offence (in my poor Judgment) as to the Illegality of it.

We hope therefore, my Lords, (when we have given our Evidence) that it will fully appear to your Lordships, from what we have opened, That the Earl of *Macclesfield* has taken the Sums charged upon him; and that he has taken them as they are charged in the Articles, *corruptly*, *illegally*, in Breach and Violation of his Oath as Lord Chancellor, and of the Trust in him reposed.

I am now come to the Vth Article, which I am commanded to open to your Lordships; and, indeed, it is a most extraordinary Instance of human Frailty: The Earl of *Macclesfield* here is not charged with taking Money of a Person who received an Office from him, but of one who quitted an Office; not for an Admission, but for a Resignation.

I believe this is the first Instance, my Lords, where any Person, on the other Side of this Bar, was ever accused of forgetting his own Dignity, the Dignity of the August Body he belonged to, and the Honour of his Sovereign,

whose Counsellor he was, and whose Royal Authority was, at that Time lodged in his Hands for an hundred and five Pounds. This is to assure that I do not know there was full Evidence to the most remote Part of this Charge, I myself should not believe it; and I am sure your Lordships Hereditarily Grievances of Mind must make it so inexcusably to you, I shall send all your Patience and Indulgence in what it is my Duty to say to your Lordships, till you hear the Evidence we shall produce.

The Case, my Lords, is this: Mr. *Thomas Besset*, one of the members in the Vth Article, soon after his Admission was admitted to his Office of Clerk of the Customs (which is in the Gift of the Crown) to Mr. *Hannay*; but being unwilling to do any Thing out of my Lord *Macclesfield's* Approbation, he applied to Mr. *Cottingham* Secretary, to obtain it upon this Occasion. Mr. *Cottingham* acquainted him with his Lordship with this Request. In a few Days Mr. *Cottingham* told Mr. *Besset*, that he had acquainted my Lord with his Request, and that a Prefect was expected of him, and asked him, what he would do. My Lordships will observe, that this was their constant Method (driving all their Bargains); for they were conscious that they were what was (legal) Mr. *Besset* replied, That he did not apprehend that Thing was due to my Lord on this Account; for that he succeeded his then, Mr. *John Besset*, and neither himself nor his Brother, made Money per any Prefect: And further added, That he hoped my Lord would insist upon any Thing, on so fitting an Occasion, since he had so paid him so considerable a Sum. But still *Cottingham* insisted that payment was required. Upon which Mr. *Besset*, fearing himself so hard dealt, said he would pay my Lord 100 l. In a few Days *Cottingham* told him, That my Lord accepted the 100 l. but that he was to look upon it as a singular Favour, that he accepted so small a Sum; and that if he was hiring the Money to him, *Cottingham*, he must take no farther Trouble, my Lord would apply to the King for Leave to resign. According to the 28th of July, 1723, Mr. *Besset* wrote a Best-Novel of 100 l. to Mr. *Cottingham*; and, in about three Weeks Time, your Lordships will be pleased to remember that his Majesty was then abroad; *Cottingham* told him, the Sign Manual was come over, and bid him for not taking out the same. The Consequence of which was, Mr. *Besset* did take it over, when it came to the Great Seal, no Consideration was had of what he gave before, but it cost him about 60 l. for the Seal.

We shall call Mr. *John Besset* to answer your Lordships, that when, resigning to his Brother, he asked the Lord Chief if any Thing was due to him, Lordships, who told him nothing was due.

This, my Lords, is the stated State of the Case, and I shall make Remarks upon it; I think nothing can be added to illustrate it, because an confident that never was any Thing like it.

But I think, out of Duty to the Commons, and Justice to the Earl of *Macclesfield*, I am obliged to take Notice at what he alleges as his Defence against this Charge.

His Lordship is pleased to say, "That this Office of Clerk of the Customs has been usually granted by the Crown, yet it has been by the Crown, says Lord's upon as the Right of the Lord's Chancellor, or the Lord's Keepers, recommended to that, and other Offices under the Great Seal, and approve of the Deputy to execute the same; and upon such Recommendation, and approving of Deputies, have accepted Prefects, and look'd upon the same as their Right."

I should not have taken Notice of his putting this Part of his Defence to the great Number, and endeavouring to detect himself under the present Practice of his Prefecture, if he had confined it to this Article; but he says, "That he has done no more than his Predecessors, Great and his Men, have done before him, and therefore hopes that it shall not be counted as a Fault to him." And indeed this Reasoning runs through his whole Defence.

My Lords, we could show, That he has done more than any of his Predecessors; but your Lordships very well know, that is not now in Question. I am sure, how Great or Able ever a Man may be that commits a Fault, your Lordships will always be Great enough, and Able enough to punish him for it, when he comes before you. And I am persuaded the Earl thought it best, that you should consider a corrupt Practice as him, (if it be so) because you have not considered it in others, who were never called to answer it before you, if any have been guilty of it. I hope your Lordships will look on it as a new Way of Reasoning, first made use of by the Earl of *Macclesfield*, to justify his own Faults by the Faults of another, to condemn the Danger and Malignity of a Diffinger by the Excuse of Invenity of it.

By the rest of this Argument of his, your Lordships plainly see, that he himself thinks of the Acceptance of any Gratuity for advising to the King, as a Counsellor, to grant this Office, had been highly Criminal for he was, at that Time, one of the Lords Justice; and during it, whole Charge a Minister of State; but he does not say that he ever Leave for Mr. *Besset* to resign, and a new Grant of the Office as a Favour from the Crown; nor, that he seems to admit would have been highly blameable; but he says, that as Lord Chancellor, he had a Right of Recommending to this Office, and his whole Conduct unexceptionable, that he looked upon a Right of Bestowing or Recommending to be a Type of Selling; so that by his own Argument, he thinks himself justifiable in doing that as the chief Officer and Distributor of Justice, which he seems to own would be highly unjustifiable in a Minister or Servant of the Crown.

I shall take Notice of but one Part more of his general Answer to the Articles, which we have opened to your Lordships, and that is when he says, "That during his Consequence in the said Office of Lord Chief Justice, or at any other Time, he never once had a Design or View, or with a View to himself any exorbitant Gain or Profit, and appears as the whole Tenor of his Life and Actions for the Truth of his Answer."

This, my Lords, is an Instance how little the greatest Men are acquainted with themselves, and how much they are liable to mistake, when they talk of their own Actions; many of his Transactions, in Money matters, have been opened to your Lordships; more will be opened, and finally, my Lords, you must be of Opinion, that this *extraneous* Largest after Gain, this Impotence of Mind where Money was concerned, this continual Weakness in the Earl of *Macclesfield*, which has given























*E. of Glasgow.* If this Point be insisted on both Sides, it cannot be avoided but they must withdraw: But I hope the Counsel for the noble Lord will consider very well of it, before they give your Lordships or the Managers that Trouble: For if your Lordships should judge the Question unreasonable, it would throw a Disgrace upon themselves, and be at least of no Service to the noble Lord that is impeached.

*E. of Macclesfield.* I humbly apprehend this Question to be extremely material, as that Circumstance of his having made this Present of One hundred Guineas out of Two thousand, perhaps, which he received for surrendering the Place, must fix this Matter in a different Light than it would appear in, if nothing else had been done but the bare paying of the One hundred Guineas; but since I perceive it to be your Lordships Sense that he should not be asked the Question, I therefore decline insisting on it.

*Dr. Sayer.* My Lords, I beg Leave to ask Mr. Basset this Question: He was pleased to say that he gave a Hundred Guineas, now I desire it may be asked of him, whether he gave it to permit him to resign, or to give a Recommendation of Mr. Henfrey, or what else; that he would please to explain it, what it was given for?

*Mr. Tho. Basset.* I have said it twice; but I will repeat it again. I said, that it was that my Lord Chancellor might recommend the Petition to the Secretary of State; for I apprehended it was not in my Lord's Power or Gift. He might have done it without taking any Money.

*Dr. Sayer.* With regard to the 6*l.* and Money, what was that paid for? Whether to the Great Seal only, or for the whole Fees in passing the Patent through all the Offices?

*Mr. Tho. Basset.* It was paid to Mr. Yeats, the Clerk of the Patents, who passed that Patent through all the Offices; and the Great Seal was included in it, as I apprehend.

*Dr. Sayer.* Ask who that Mr. Yeats is, whether he is an Officer belonging to the Great Seal, under the Lord Chancellor?

*Mr. Tho. Basset.* He is Clerk of the Patents; I do not know who he belongs to.

*Mr. Robt. My Lords,* I desire he may be asked, Whether Mr. Goringham told him, that the Lord Macclesfield insisted upon any particular Sum? *Mr. Tho. Basset.* Mr. Goringham told me, that my Lord insisted upon One hundred Guineas; and I argued the Unreasonableness and Hardship of it.

*Mr. Con. Serj. My Lords,* I desire Mr. Basset may acquaint your Lordships, whether he made any Application to the noble Lord for Permission to resign?

*Mr. Tho. Basset.* I never spoke to my Lord myself. *Mr. Serj. Pargely.* If the Gentlemen have done with him, we beg Leave to explain this Matter, and to ask him upon what Account it was that Mr. Goringham, from my Lord Macclesfield, said a Present was expected?

*Mr. Tho. Basset.* I cannot say what was Mr. Goringham's Reason; but he said my Lord Chancellor did not know Mr. Henfrey; and then he went on, and said, a Present was expected. I apprehended Mr. Goringham took it, that I could not do it without my Lord Chancellor's Consent.

*Mr. Serj. P.* I desire he may be asked, whether the Hundred Guineas was paid for a Recommendation of Mr. Henfrey, or that the Whole of procuring the Warrant for the Patent was to be done for it?

*Mr. Tho. Basset.* Mr. Goringham assured me, I need have no further Trouble about it, if I would pay the Hundred Guineas: He would get the King's Warrant, and I should have no further Trouble, but passing the Patent.

*Mr. Serj. P.* My Lords, I desire he may be asked, whether he depended upon these Affairs, or whether he made Application to any Body else?

*Mr. Tho. Basset.* I never made any other Application; and I told Mr. Goringham, if any Accident happened of Death, &c. before the Warrant came over, I hoped my Lord Chancellor would return the Hundred Guineas; and he said, fairly so.

*Mr. Serj. P.* I beg Leave to observe, that the Patent proves that this corrupt Bargain was calculated.

*Mr. Lathrop.* I desire he may be asked, whether Mr. Goringham delivered to him the Sign-manual, or whether Mr. Goringham got the Patent passed?

*Mr. Tho. Basset.* I never saw the Sign-manual. He delivered it, as I believe, to Mr. Yeats.

*Mr. L.* Did Mr. Goringham give you Notice when the Sign-manual came over?

*Mr. Tho. Basset.* Yes; he did give me Notice it was come over, and was very angry I did not go about it.

*Mr. Con. Serj.* I desire Mr. Basset may give your Lordships an Account what Time it was?

*Mr. Tho. Basset.* About the latter End of July.

*Mr. Con. Serj.* I desire he may be asked, whether he had not made Application to the Secretary's Office?

*Mr. Tho. Basset.* No, I had not made any Application at all.

*Mr. Serj. Pargely.* Did you ever make any Application to any other Person, either before or after?

*Mr. Tho. Basset.* I am positive I did not.

*Mr. Serj. Pargely.* Did you ever say, about that time, that you had made Application to any other Person?

*Mr. Tho. Basset.* No, I don't remember that I did.

*Mr. Serj. Pargely.* No? Did you never make Application to any Body else?

*Mr. Tho. Basset.* I never told any Body, to the best of my Knowledge and Belief. I am very confident I never did.

*Mr. Serj. P.* My Lords, if they have done with this Witness, we beg Leave to call Mr. Goringham, who was an Agent, and paid over this Money to my Lord Macclesfield.

(*Mr. Peter Cattermole swears.*)

*Mr. Serj. P.* My Lords, we only call Mr. Goringham, to acquaint your Lordships when he paid over this Hundred Guineas to my Lord Macclesfield.

*Mr. Goringham.* In July, I think it was.

*Mr. Serj. P.* How long after you received it from Mr. Tho. Basset?

*Mr. G.* I believe I paid it over that Day, or the Day after.

*Mr. Serj. Pargely.* I desire he may be asked, how long before the Patent was passed?

*Mr. Goringham.* I can't tell, because I can't certainly say when the Patent passed.

*Mr. Lathrop.* We desire to ask him, whether it was that Year when the King was beyond Sea?

*Mr. G.* I think, my Lords, it was; it was in July 1723.

*Mr. Con. Serj.* If the Gentlemen of the House of Commons have done with him, I beg that he would give your Lordships an Account what Day could he be paid by Mr. Basset?

*Mr. G.* I beg to say, you hear the Question.

*Mr. Con. Serj.* Basset told me he had agreed with Mr. Henfrey for the Place of Clerk of the Calibres; and that he did not think it convenient to keep two such considerable Places, which depended upon his own Life only; that is, the Master's Place, which he had before purchased, and this. He told me he had disposed of this Place to Mr. Henfrey, in order to reimburse himself Part of the Money he had paid to Mr. Henfrey for his Master's Place that he had purchased of him, and so that Reason he did not care to keep both.

*Mr. Con. Serj.* Did he tell you how much he had disposed of it for?

*Mr. G.* No, he did not.

*Mr. Con. Serj.* My Lords, I desire Mr. Goringham may be asked, what it was Mr. Basset desired him to request of my Lord Macclesfield?

*Mr. G.* To the best of my Remembrance, he said, he hoped that, Lordship would accept of a Hundred Guineas, because he had received from him so lately a Present for his Master's Place, and he desired his Lordship to forward his Petition to his Majesty.

*Dr. Sayer.* Was this on the first Application?

*Mr. G.* Yes, he never told him so, as Application to me.

*Dr. Sayer.* It is of Consequence; and therefore I desire it may be asked, whether, at the first time he applied, he made this Offer of One Hundred Guineas?

*Mr. G.* He did, and I paid it over to my Lord Macclesfield.

*Dr. Sayer.* I desire Mr. Goringham may be asked, whether he knew Mr. Henfrey before that Time?

*Mr. G.* I know him very well, he was my next Door Neighbour both in Town and Country.

*Dr. Sayer.* Did you tell Mr. Basset you did not know him?

*Mr. G.* Certainly not. I never told him so, it was impossible I should be was my next Door Neighbour both in Bril-Yard, and at Hamstead.

*Dr. Sayer.* What Chandler had Mr. Henfrey?

*Mr. G.* A very good one.

*E. of Ardr.* When you first spoke to me of this Matter, what did you tell me?

*Mr. G.* I told your Lordship Mr. Henfrey was my next Door Neighbour both in Town and Country; and that he was a Gentleman of a unquestionable a Character as any at the Bar; and your Lordship was pleased to depend upon me for his Character.

*Mr. Sayer.* He is pleased to say Mr. Basset did not inform him what Agreement was made between him and Mr. Henfrey; but did not say so upon what Account he resigned?

*Mr. G.* He told me he surrendered the Office, to reimburse himself the Money he had paid to Mr. Henfrey for his Office.

*Mr. Sayer.* What Office was that?—*Mr. G.* The Master's Office.

*Mr. Sayer.* Did he mention that?—*Mr. G.* Yes, he did mention it.

*Mr. Serj. P.* If they have done, we beg Leave to ask Mr. Goringham, since he informed my Lord of the Circumstances of Mr. Henfrey, whether he acquainted my Lord of Mr. Henfrey, before or after the Time he paid the 100 Guineas?

*Mr. G.* I acquainted his Lordship before.

*Mr. Serj. P.* I beg Leave to ask another Question; if this Gentleman can inform your Lordship upon what Account it was he received the 100 Guineas from Mr. Basset?

*Mr. G.* I received the 100 Guineas upon Account of his Surrender of his Office.

*Mr. Serj. P.* We beg Leave to ask another Question; Whether before he agreed with Mr. Basset, he had informed my Lord Macclesfield of any Proposal, or what was to be expected?

*Mr. G.* No, I don't remember I did. All that passed on that Occasion was, Mr. Basset said he was willing to give 100 Guineas, and he hoped his Lordship would not insist upon more.

*Mr. Serj. P.* I beg he may be asked another Question: Whether when he came back from my Lord Macclesfield to Mr. Basset, with the Account of the Acceptance of the One hundred Guineas, he did not tell Mr. Basset, he ought to take it as a Favour that his Lordship accepted so little?—*Mr. G.* I can't remember, but I think I did not.

*Mr. Serj. P.* Can you say you did, or you did not?

*Mr. G.* To the best of my Remembrance I did not.

*Mr. Serj. P.* We desire he may inform your Lordships what Answer he brought to Mr. Basset from my Lord Macclesfield?

*Mr. G.* The Answer my Lord Macclesfield desired me to give Mr. Basset, was, that he agreed to accept of the 100 Guineas according to his Proposal.

*Mr. Serj. P.* Whether was this Offer of the 100 Guineas the 1<sup>st</sup> Time, or after Mr. Goringham had spoken to my Lord Macclesfield about it?

*Mr. G.* Mr. Basset proposed to me to give the 100 Guineas before I spoke to my Lord about it.

*Mr. Serj. P.* Whether it was the first Time he offered the 100 Guineas, or some Time after?

*Mr. G.* He offered the 100 Guineas the first Time.

*Mr. Serj. P.* Whether Mr. Goringham did not say the first Time, that something was expected?

*Mr. G.* I believe he did say the Great Seal would expect something. Mr. Lathrop, Mr. Goringham says, he believes he did say something was expected. Then I desire to refresh his Memory, and that he would acquaint your Lordships whether that was mentioned before the 100 Guineas were offered?

*Mr. G.* No, not as I remember.

*Mr. L.* What did you say on that Occasion?



Mr. Cottenham. I felt on that Occasion, as he offered 100 Guineas, my Lord was willing to accept of it.

Mr. Serj. P. I am sensible of the first Discharge he had with him, I think he does as well as that he did, my Lord expected something on the account of it in Office.

Mr. Cottenham. The first Discharge when that was mentioned, I told my Lord expected something to be paid by way of Complement.

Mr. Serj. P. Was that the first Discharge?

Mr. C. The first that I remember.

Mr. Serj. P. I beg another Question. If Mr. Cottenham told Mr. Besset that my Lord expected something by way of Complement, how came Mr. Besset to say that?

Mr. C. Mr. Besset asked me if I believed his Lordship would not accept of a Complement? I told him I believed his Lordship would, and that I would give him 100 Guineas.

Mr. Serj. P. Had you any Dispute with my Lord Maundrell before?

Mr. C. No, nor at all. I told him it was usual to make a Present, and I thought I was willing to give 100 Guineas.

Mr. Serj. P. I know Mr. Cottenham is a very honest Gentleman. I desire to ask him, if Mr. Besset did not then tell him, that when his Brother was admitted, my Lord Cottenham would take such a gift?

Mr. C. He did not, upon the Oath I have taken, that is the first time I heard of it. I did not know whether his Brother paid any thing.

Mr. Serj. P. There is some little Variation, that not material, because Mr. Besset and Mr. Cottenham, we beg that Mr. Besset may come to the Bar again.

Mr. C. I am sensible of the first Discharge, but I think it is very extraordinary for Persons to produce Writings, to confront them with Witnesses.

Mr. Serj. P. We do it to enforce the Testimony of our Witnesses.

Mr. Serj. P. In an office of this Nature it is usual to produce Writings, without producing the Agents employed. Mr. Cottenham was in a much safer of his Lordship's, and we have to say.

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Mr. Dilegno. Mr. Besset's father was then sent to his Majesty abroad, by the Discharge of his Lordship.

Mr. Serj. P. I do not see how it would remain under Lordship's, whether, in Mr. Besset's Father's case, he did not then send his Office should be made to say, and without any further.

Mr. Serj. P. I think we may reasonably object to that Question. We are not troubling your Lordship with any unreasonable Questions, but when a Gentleman experienced in the Law shall ask Questions concerning written Evidence, we must answer them, and submit it to your Lordship.

Then the Managers for the Commons requesting the House, that they had gone through with their Evidence to the Ninth Article, and intended next to proceed to the Fifth, Sixth, seventh, and Eighth Articles, and acknowledging it was requisite their Evidence should be given entire, submitted it to their Lordships whether they should now proceed, or whether they and all Parties were directed to withdraw, and the Lords refused to proceed further in the Trial To-morrow at Ten of the Clock in the Forenoon, and adjourned to Next a Clock To-morrow Morning.

Friday, May. The Second Day.

The Lords being seated in their House, and the Managers being come, and the said Earl sitting on a Stool at before, and his Counsel at the Bar, Proclamation was made by the Sergeant at Arms as follows.

Our Sovereign Lord the King doth charge and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

I then another Proclamation was made as on the first Day, That all Persons concerned were to take Notice, that Thomas Earl of Arundel had now shewn upon his Trial, and they may come forth, in order to make good the Charge.

I, C. J. King, Gentleman of the House of Commons, you may proceed to your Evidence.

Mr. Serj. P. The Managers will now proceed to the Fifth, Sixth, seventh, and Eighth Articles, being 1<sup>st</sup> of the same Nature and Kind, relating to the corrupt taking of Money of the Deputies of the Officers in the Militia in Chancery. The Question between the Government and the Lordship being, that the said Arundel was the Father of the said Money.

The Commons charge the taking of the money to be by 3<sup>rd</sup> section, and 4<sup>th</sup> section, and to be drawn out of 1<sup>st</sup> Militia against the 1<sup>st</sup> section, the Lord in his Answer said, that it was a voluntary contribution given, as Persons, upon their respective orders, made. The Managers answered that they did not say so, Lordship said that it was the Charge of the Commons, and that the manner of taking the money charged on the Lord, will be supported by the Evidence which will be produced.

The first Witnesses that we shall call in our Evidence shall be to the Fifth Article.

(Mr. William Knollys sworn.)

Mr. Serj. P. We have to call Mr. Knollys in to be sworn, when he was admitted to be one of the Clerks of the Court of Chancery.

Mr. Knollys. On the oath of myself, 1725.

Mr. Serj. P. We desire of the Jury to be sworn, in the manner of his commission, when I am sworn to be sworn, and about it, with whom, and what he gave the Lordship.

Mr. Knollys. After I had agreed with Mr. Rogers for the Payment of his Office, I delivered out Mr. Rogers in to Mr. Cottenham, my Lord's Secretary, to know what my Lord Chancellor would expect to receive.

Mr. Serj. P. I was told that Mr. Rogers was the Father of the said Money, and told him my Case. He answered me, that he was the Father of the said Money, and told him my Case. He answered me, that he was the Father of the said Money, and told him my Case.

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Mr. Serj. Popham. I desire he may be asked, Whether he had any Discharge with Mr. Rogers, the former Master, about the Value of this Office, but as he spoke with Mr. Catnacham?

Mr. Rogers. Yes.

Mr. Serj. Popham. How much did he say it was worth?

Mr. Kyn. He said, he usually made 1700*l.* a Year of the Office, and sometimes 1000*l.* a Year.

Mr. Serj. Popham. I desire he may be asked, what Sum of Money he gave Mr. Rogers for his Place?

Mr. Kyn. 6000*l.*

Mr. Serj. Popham. I desire this Gentleman may be asked, at what Time he paid Mr. Catnacham the fifteen hundred Guineas, whether it was before or after his Admission?

Mr. Kyn. Before, I believe it was the 8th or 9th of August, in the Morning.

Mr. Serj. Popham. I desire this further Question, whether he paid it out of the Sum of Money, or out of Effects of his own?

Mr. Kyn. He could not be paid out of the Sum of Money, for I was not then admitted.

Mr. Serj. Popham. Whether Mr. Baile, or any body else concerned in Negotiating this Office, gave any Account of your Substance and Ability?

Mr. Kyn. No, I believe not.

Mr. Catnacham. If the Gentlemen have done, I beg leave to ask him one Question, and it is in relation to what he was examined to first. He said there was a Discharge, that the Office was worth 1700 or 2000*l.* a Year. Now, my Lords, I would ask him, How it was Mr. Rogers apprehended that the sum of annual Profit did arise. Whether by the ordinary Profits of the Office, or the making of the Sum of the Money?

Mr. Kyn. I understood it of both together.

Mr. Serj. Popham. These hath been one Question asked, as if there was no Colour to this Money, was paid out of the Sum of Money? But I would beg leave to say all another Question to enquire in that I think Mr. Rogers says, That the Money paid for him by Mr. Baile, was not out of the Sum of Money, because he was not then admitted; but I would ask, How it was repaid or replaced?

Mr. Kyn. I did not imagine, when I came to Town, that the Place would have come to me in such a manner. There was 1700*l.* and 2000*l.* of a Gentleman, one Mr. Kyn. I, at that time, and I afterwards accompanied with him for that Money, but I kept an Account of the Money of the Court with him.

Mr. Serj. Popham. What Sum of Money was repaid to be in your Office, and to go along with the Office as Cash?

Mr. Kyn. I was told there was about 20,000*l.*

Mr. Serj. Popham. I desire to know who told him so?

Mr. Kyn. Mr. Rogers.

Lord Leveson. When the 1700*l.* and the 2000*l.* was accepted for to the Person that did lend it, if I did understand him right, he says he accepted for it, and it was allowed out of the Sum of Money.

Mr. Kyn. Yes, my Lords, in order to take the Office, before I did accept of it, that Money out of the Money belonging to the Sum of the Court. I understood it was used to do so, and that others had done it.

Lord Leveson. My Lords, I would ask him another Question: I think Mr. Rogers talks of 6000*l.* being paid by him to his Predecessor: I would be glad to know in what manner that was paid, and out of what Money or Effects?

Mr. Kyn. My Lords, when I treated with Mr. Rogers, he mentioned to me what Money he had in his Hands belonging to the Office, and we entered into Articles in relation to my paying him 6000*l.* for his Place: And when I came up to Town, in order to take the Office, before I went to my Lord Chancellor, I gave him a Bond for 6000*l.* This was the 9th, and on the 10th he delivered up the Bond, and paid me 6000*l.* in Money; and I gave him a Receipt for six thousand and nine Pounds.

Mr. Serj. Popham. I desire he would explain himself on that Part; where he says he gave him up his Bond; whether he reckoned the 6000*l.* so much that of the Sum of Money?—Mr. Kyn. Yes, my Lords, I do.

Mr. Serj. Popham. I desire he may be asked this Question: He speaks of a Gentleman that paid him 1700*l.* part of the 1700 Guineas; I desire he may be asked, Whether that Gentleman had any, and what Money or he in his Hands?

Mr. Rogers. My Lords, I had Money in that Gentleman's Hands. When I lived in the Country, he used to receive Money for me in Town, as Government Securities, and other Questions, and pay as I directed. There was an Account Current between us, and I did not then precisely know what Balance was then in his Hands, but I have said it up since, and find that there was about 200 or 300*l.* due to me at that time.

Mr. Serj. Popham. I desire he may be asked, he says he had an Account Current with that Gentleman at that Time, and kept Cash with him.

Mr. Kyn. He used to receive and pay Money for me when I was in the Country.

Mr. Serj. Popham. I desire to ask one Question more, if Mr. Rogers did not afterwards keep, with that Gentleman, the Cash of the Sum of Money, as well as his own Cash, profitably?—Mr. Kyn. Yes.

Mr. Serj. Popham. When were the fifteen hundred Guineas paid?

Mr. Kyn. On the 8th the fifteen hundred Guineas were paid, and the 9th I was admitted.

Mr. Serj. Popham. We don't now proceed to examine relating to the manner of Payment for the Office out of the Sum of Money, because there will be a distinct Examination as to that, upon another Article; the present Question being only about the form paid for the Admission, and not out of what Money, which we don't state now at present.

Mr. Catnacham. My Lords, we think it necessary to mention this, because otherwise it will take up a great deal of your Lordships time unnecessarily, and it will be proper to keep the Evidence entire, and therefore we hope the Council on the other Side shall be contented to ask such Questions only as are proper to the Article they are upon. My Lords, we desire Mr. Charles Baile may be called.

Mr. Charles Baile sworn.

Mr. Serj. Popham. I desire he may be asked, Whether he paid any Money, and what time, to Mr. Catnacham, and where?

Mr. Baile. My Lords, a Day or two before Mr. Rogers was admitted,

I paid fifteen hundred Guineas, which was given for his Admission, delivered it in a Bag to Mr. Catnacham.

Mr. Serj. Popham. For what Use was it paid?

Mr. Baile. I apprehend it was for the Use of my Lord Chancellor.

Mr. Catnacham. Upon what Account?

Mr. Baile. For his Admission to the Office, on Mr. Rogers's Surety. Mr. Serj. Popham. I think he says it was paid a day or two before was admitted.

Mr. Serj. Popham. Before the Payment of this Money, what Difference was there between you and Mr. Catnacham?

Mr. Baile. I was requested, by Mr. Rogers to attend Mr. Catnacham to know what was expected; and Mr. Catnacham told me fifteen hundred Guineas was expected to be paid, as a Sum for Mr. Rogers's Admission.

Mr. Serj. Popham. If the Council for the Noble Lord don't ask Witness any thing, we beg Leave to call another Witness.

Mr. Catnacham. There are several Witnesses we apprehend proper to be called now, and yet may fall under the other Article. Whether it is Lordship's Pleasure that we shall now ask Mr. Baile as to the Circumstances and Character of Mr. Rogers?

Mr. Lord. My Lords, there is an express Article so that Point; we fore when we come to that, then at the time.

Mr. Serj. Popham. One Question may be proper to be asked before a Gentleman goes, and that is, Whether, when Mr. Catnacham told him what was expected on his admission, he told Mr. Rogers of it?

Mr. Baile. Yes, Sir; I told Mr. Rogers that fifteen hundred Guineas was expected.

Mr. Serj. Popham. Then I desire he may be asked, Whether Mr. Rogers did not immediately consent to give it, or what did Mr. Rogers say?

Mr. Baile. Mr. Rogers said he must submit to it, and do as Mr. Catnacham had mentioned, or to that purpose.

Mr. Serj. Popham. Whether Mr. Rogers informed him of offering it any less Sum, and what?

Mr. Baile. Mr. Rogers mentioned to me that he thought it had been 1700*l.*

Mr. Serj. Popham. How came Mr. Baile to know it was Guineas?

Mr. Baile. Because Mr. Catnacham told me so.

Mr. Serj. Popham. My Lords, we are unwilling to give your Lordships any Trouble, only beg leave to take Notice, that Mr. Catnacham was Summonsed to the Lord's Bench, during the whole course of his Administration; he is not immediately under the Power of the Managers, but he is under the Obligation of a Summons, and had Notice to attend.

(Mr. Catnacham appears.)

Mr. Serj. Popham. My Lords, we desire he may be sworn.

(Mr. Catnacham sworn.)

Mr. Serj. Popham. My Lords, we beg Leave to ask Mr. Catnacham the Question: The Money that he received from Mr. Charles Baile, whether he paid it over to the late Lord Chancellor, and when?

Mr. Cat. The Money which I received from Mr. Charles Baile, the fifteen hundred Guineas, I paid it to my Lord in a day or two I believe. I believe the next Day: it was very soon after I received it from Mr. Baile.

Mr. Serj. Popham. Whether he acquired the Earl of Macclesfield that he had received it upon Mr. Rogers's Admission?

Mr. Cat. Yes, my Lords, I told the Earl of Macclesfield that Mr. Baile had paid me the Money, by the Direction of Mr. Rogers.

Mr. Serj. Popham. How long was that before Mr. Rogers was admitted?

Mr. Cat. I can't say justly the Time, it might be two or three Days. There was a Day appointed for the Admission of Mr. Rogers, but some thing happened that he could not be admitted that Day.

Mr. Serj. Popham. I desire to ask this Witness one Question: At that Time, whether Mr. Catnacham can recollect himself, if Mr. Rogers did not make an Objection of the great Deficiency that had happened in Dr. Rogers's Office?

Mr. Cat. Upon the Oath that I have taken, he did not.

Mr. Serj. Popham. I desire another Question, Whether he did not tell Mr. Rogers that this was one of the best Offices?

Mr. Cat. My Lords, I ask your Patience; I hope they shall be confined to the general Question, What was said, and not to Particulars.

Mr. Serj. Popham. What was said in relation to the goodness of the Office.

Mr. Cat. I did say before the Honourable Committee, that when he agreed to give the fifteen hundred Guineas, I told him that he had purchased a very good Office; and I did say, that there was a great deal of Business in it; but I never knew what Money was in the Office, nor do I know it to this Day. I own I did say before the Honourable Committee, that I told him he had purchased a good Office.

Mr. Serj. Popham. Whether was this before or after the Agreement made with Mr. Rogers?

Mr. Cat. I think at the same Time, just after we had sealed the Contract to be paid to my Lord Macclesfield, I told him he had purchased a good Office with very good Business in it.

Mr. Serj. Popham. I desire one Question more: Whether he remembers that there was any motion made of 1000*l.* or one thousand Guineas by Mr. Rogers?

Mr. Cat. No, I remember nothing of it. He asked me what my Lord expected; I told him what my Lord had from the previous Motion, I expected the same from him; I never heard a Word of 1000*l.* or one thousand Guineas, nor knew anything at all of it. I have given you the best Account I can as to the Fact that happened relating to the Agreement.

Mr. Baile may remember more of it; the Fact is above your Lordships.

Mr. Serj. Popham. My Lords, we now beg Leave to proceed to the 8th Article, relating to Mr. Thomas Basset, who was admitted the 10th of June 1723.

(Mr. Thomas Basset sworn before.)

Mr. Serj. Popham. My Lords, we desire that Mr. Basset may give an Account to your Lordships when he was admitted, and upon what Bargain? Give an account of the whole Transaction.

Mr. Basset. I was admitted the 10th of June 1723, and before Mr. A. Laidlaw.



Acquaintance, and as soon as I had agreed with Mr. *Hewitt* my Predecessor, I applied to Mr. *Cattingham*, and desired him, that he would acquaint my Predecessor, I had agreed with Mr. *Hewitt* to succeed him in his Office, and desired him to let me know my Lord Chancellor's Thoughts, whether he approved of me to succeed Mr. *Hewitt*. Some after this, I whether the next Day, or a Day after, he met me, and told me he had agreed with my Lord with the Mr. *Bayle* I sent; he said my Lord expected me with a great deal of Respect for my Father, Mr. *Sergeant Bayle*, and that he was glad of this Opportunity to do me a Favour and Kindness, and he had no Objection in the World to me: That was the Answer Mr. *Cattingham* returned; he then mentioned there was a Present offered, and he did not doubt but I knew that; I answered, I had heard of it, and I was willing to do what was usual; I desired to know what was that said, and what would be expected; he said he would name no Sum, and he had the late Reason to name a Sum to me, because I had a Brother a Member, and I was well acquainted with Mr. *Griffith* and he recommended me, and I might apply to them, and they would let me what was proper for me to offer. I told him upon that Occasion I would confide my Brother and Mr. *Griffith*; accordingly I did, and I referred to Mr. *Cattingham*, and told him I had talked with them about it, and their Opinion was a thousand Pounds (but I believe I said, I would be paid for Guineas) was sufficient for me to offer. Upon this Mr. *Cattingham* shook his Head, and said, That would do, Mr. *Basset*, you will be better served. Why, said I, won't that do, I think it is a little Present; I said, a great deal more has been given; Says I, I am sure my Brother did not give so much, nor Mr. *Griffith*, and their Present was advised me to accept with, told me it was sufficient, and I desire you to acquaint my Lord with the Proposal; Says he, I don't care to go with that Proposal, you may find some body else to do so; Says I, I don't know whom to apply to; says he further, Sum, Mr. *Basset*, you won't go to lower the Price, (these were his very Words, at least I am sure that was the meaning of them) I can assure you Mr. *Keynes* gave 1200 Guineas. I said that was above three or four Years ago, and that that time there had been several Occasions of lowering the Price; the Fall of such had lowered the Value of Money; and I think I mentioned Dr. *Barrow*'s Difficulty, and I did not know what the Chancellor's act of thought and therefore I thought, at that time of Day, when black and every thing was falling, a thousand Guineas was more than 1200 when Mr. *Keynes* gave it. He still insisted he did not care to go with that Mr. *Keynes* says I, Only acquiescent my Lord with it, and if my Lord insists upon more, I will consider of it; Says he, There is no haggling with my Lord, if you refuse it, I don't know the Consequence, he may refuse it to you, as he to shut you at all, and you may lose the Office. Then I began to consider, and was both to lose the Office, and told him I would give 1200. He said Mr. *Keynes* had given Guineas. Then I asked whether it must be a Gift; He said, in what you will, so it be Guineas. In a Day or two he came and told me, that my Lord was pleased to accept of me, and he desired me to come as an Opportunity served, and he would give me Notice. He accordingly gave me Notice about the latter end of May, he told me my Lord had given a Day for my Admissions, and my Father and I went to my Brother *Basset*'s, and took him up by the Way, in order to pay our Respects to my Lord on that Occasion. We had not been long, but there was a Message brought to my House, to let me know that my Lord was very ill, and I could not be admitted; but I should come in a little Time when I should. Upon that I saw Mr. *Cattingham* afterwards, and talked him how my Lord did, and when I should be admitted; Says he, I can't fix the Day, but he is in a Bed-ridden, and I shall tell you. Accordingly, on the 11th of June, 1725, he came, and desired me to come immediately, to come alone, and bring nobody with me, for my Lord would favour me that Morning. Accordingly I went, and the first Question Mr. *Cattingham* asked me was, if I had brought the money; I told him, to be sure I should not come without it. He asked what Time it was; I told him in Bank Bills, two Bank Bills, one of 1000, and the other 500. He took them up, and carried them to my Lord; He returned back, and told me my Lord was ready to admit me. I was carried up stairs, and there I was in the Bed-chamber.

Mr. *Serj. Prynne*. My Lords, I desire, if he can remember, he may be asked in what Name those Notes were made payable, or in what manner they were made.

Mr. *Tho. Basset*. I can't remember the Names the Notes were made payable to, they were sent for from the Bank for this Purpose; but I believe they were forged Names.

Mr. *Serj. Prynne*. I desire he may be asked, why he takes they were forged Names, and for what Reason the Notes were taken in forged Names?

Mr. *Tho. Basset*. The Reason was, because I did not think it proper to put them out in the noble Lord's Name, nor in my own Name.

Mr. *Serj. Prynne*. My Lords, I desire he may be asked, of whom he received those Bank Notes, whether they were his own, or whether he borrowed them?

Mr. *Tho. Basset*. I borrowed a Draft upon the Bank of my Brother's, except his Cash at the Bank, and he gave me a Draft upon the Bank, and I sent to the Bank, and ordered the Notes to be made out on forged Names.

Mr. *Serj. Prynne*. I desire he may be asked, whether by his Brother, he means his Brother, the Master?

Mr. *Tho. Basset*. Yes, my Brother, the Master.

Mr. *Serj. Prynne*. And where did he keep his Cash?

Mr. *Tho. Basset*. He kept his Cash at the Bank.

Mr. *Serj. Prynne*. I desire Mr. *Basset* may inform your Lordships, what Conversation he had with my Lord *Mansfield* when he was admitted?

Mr. *Tho. Basset*. I had no Conversation with him before I was sworn. That I once my Lord was in Bed, and as soon as I was sworn, in, my Lord called me to him, shook me by the Hand, and wish'd me Joy, and he had a Respect for my Father, *Sergeant Basset*, his old Friend and

Acquaintance, and the Family; and, last he, You are sworn in by a dying Chancellor. I told him, I hoped his Lordship would live a great many Years.

Mr. *Serj. Prynne*. I desire Mr. *Cattingham* may be called.

(Mr. *Cattingham* called, and appeared.)

Mr. *Serj. Prynne*. My Lords, I desire Mr. *Cattingham* may be asked, to whom he paid the 1200 Guineas which he received from Mr. *Tho. Basset*?

Mr. *Car.* I paid it to the Earl of *Mansfield*.

Mr. *Serj. Prynne*. Whether he carried it immediately or not, or at what Time?

Mr. *Car.* Mr. *Basset* brought it to me, as I remember, in a Bank Note of 1200 Guineas, and I gave it to my Lord.

Mr. *Serj. Prynne*. Whether this was done immediately after you received it?

Mr. *Car.* Yes, my Lords, immediately.

Mr. *Serj. Prynne*. That will suffice. My Lords, we only beg leave to observe one thing that arises from the Answer of the Lord, imported on these two Articles, which is, that afterwards, and before the impeachment, he did deliver the Prefect to him by the said Earl of *Mansfield*, being 1250, and also the Prefect to him by the said Earl of *Basset*, being the like Sum of 1250, into the Court of Chancery in open Court, &c.

Mr. *Serj. Prynne*. My Lords, we desire that Mr. *Cattingham* may be asked one Question, What Conversation there was between him and Mr. *Basset*, concerning the Payment of this 1200 Guineas?

Mr. *Car.* Mr. *Basset* told me, that he had agreed with Mr. *Hewitt* for the Surrender of his Office. He told me he was a Person known to the Earl; but if he wanted a further Character, his Father, Sir *John Basset*, and his Brother, would give him a further Character. I acquainted the Earl, his Lordship told me that he knew Mr. *Basset*, that he had a good Character, and had married a good Fortune, and the Family was a wealthy Family, so that the Earl would oblige him, and admit him. A Day was appointed to admit Mr. *Basset*; but the Earl falling sick before the Time came that he was to be admitted, which was, I think, the last Day of *Easter Term*, 1725, it was then delayed.

Mr. *Serj. Prynne*. My Lords, I desire that Mr. *Basset* may be asked, whether he had any Business in the Office, and he had been complemented upon by the Family knew it, and he was both to be disappointed, and he tried to get almost out of my Life; upon that, I promised to speak to the Earl, and as soon as the Earl was able to do Business, it was done.

Mr. *Serj. Prynne*. If you please to recollect yourself, what was the particular Sum Mr. *Basset* offered?

Mr. *Car.* 1200 Guineas.

Mr. *Serj. Prynne*. Did he talk of any less Sum?

Mr. *Car.* Not a Farthing less; he asked me what was expected; I told him the Sum Mr. *Keynes* had paid, which was 1200 Guineas; and he never offered a Farthing less.

Mr. *Serj. Prynne*. We desire, Mr. *Cattingham*, that you would recollect yourself, and tell us whether he offered 1200 or 1200 Guineas.

Mr. *Car.* I have recollect, and what he offered to me was 1200 Guineas, and I never heard of a Farthing less; I never heard a Word of 1200 Guineas.

E. of *Mansfield*. If your Lordships please, I desire Mr. *Cattingham* may be asked, what Condition I was in, in respect to my Health, at that Time?

Mr. *Car.* The Earl at that Time was very ill, Mr. *Basset* having pressed to be admitted the first Opportunity; I think your Lordship fell ill the last Day of *Easter Term*, 1725, and I meeting with Dr. *Wood*, the Doctor told me the Earl was in a dangerous Condition, that if his Disorder had not a Turn, he thought he could not live 24 Hours. The Doctor and I went and tapped together; he bid me to be at the Earl's next Morning; I met him there, and he told me the Earl's Disorder had a Turn, and he might live over it; I asked the Doctor, telling him there was a Business that Mr. *Basset* pressed me to do, if it would be safe for the Earl to do it. He told me, if it did not admit much Thought and much Company it might be done. I told him it would not admit much Thought or Company; and he said it might be done.

E. of *Mansfield*. What was the Occasion that Mr. *Basset* was desired to come alone?

Mr. *Car.* The Reason was upon the Account of your Lordship's Indisposition; and for that Reason I sent to Mr. *Hewitt* for his Surrender, because my Lord could not be much Company.

Mr. *Sergeant*. I desire to ask you, upon whole Importance it was you asked Dr. *Wood* that?

Mr. *Car.* I asked it myself; but it was, because Mr. *Basset* importuned me to: And I remember this Circumstance, when I went to visit House, he had something of the Jaundice, and looked ill. I asked him, if he was fit to be admitted; I thought Mr. *Basset* would not have been in error, if he did not think the Earl had been dying, and that then he would have waited longer.

Mr. *Pharm.* My Lords, if the Gentlemen have done, I desire to ask one Question; Whether, on Occasion of these Matters being vacant, he took Directions from my Lord Chancellor to set a Price, or did it be of his own Head?

Mr. *Car.* I had no Directions in this matter; but when any Vacancy or Alienation happened, and they asked me what Complement I thought would be acceptable, I told them the Complement that had been before made. I spoke it as my own Opinion, and without any Directions from the Earl.

Mr. *Serj. Prynne*. I desire he may be asked, whether ever he concluded any Bargain with any of these Matters, without his Lord's Approbation?

Mr. *Car.* No, I did not.

Mr. *Oppos.* I would ask Mr. *Cattingham* one Question, which, I think, he hath not answered; I ask whether he had not, in general, Directions from the Lord Chancellor, to submit upon, or set any particular Prices for these Places?



*E. of Mar.* I think the learned Gentlemen do not observe that I own the Earl's Examinations to such Articles as the question is, they are not to be taken to, and I am only, therefore, to be satisfied, I suppose proper to each Article where they shall be so have justified upon a Price, to ask to that Price, than to ask the question, whether I did not do this to itself upon any price, it is not that I am afraid of the Question that I put, but I am afraid of its being made a Precedent for giving your Lordships a great deal of time, and I am sorry.

*Mr. Chief.* This is proper to this Article, because it charges the Earl with justifying upon Prices. Therefore I desire to know, whether the Earl did ever give any Order to him to justify upon any of these Prices? I have the Gentlemen shall answer the Question.

*Mr. Lang.* We apprehend we are upon a proper Question; on the one side we say these Sums were in debt upon, and that there was an Agreement made for them; on the other side the noble Lord in his Answer says, they were Payments, without any Reced to any Agreement, and voluntary, as if there had been no Bargain at all.

*Mr. Serj. Popham.* My Lords, we only propose a general Question, which, we say, stands, and from Mr. Langdale's Examination. When Money is expended, we apprehend it is in the same as justifying upon it; therefore we desire Mr. Chief to give our Lordships, whether he be satisfied upon any of these Prices without Direction from my Lord Macclesfield?

*Mr. Chief.* The Masters proposed these Sums to me, to make such a Compromise to my Lord, and I acquiesced in the Earl with it; I did not without the Earl's Approbation.

*Mr. Serj. Popham.* I desire he may be satisfied if he did not insist on these Prices?

*Mr. Serj. Popham.* My Lords, I beg the Question may be confined to some particular Articles, they are now upon, for as they are now upon general Articles, they cannot, according to the Rules they were pleased to make, by doing, ask any Question, but what relates to them. We desire to desire they may confine themselves to these two Articles. As to any other things proposed any of the Articles they have to and, let them be so particular they will, but we desire they may confine themselves to such Articles. Otherwise our Question may be made all Articles to answer.

*Mr. Serj. Popham.* Whether we should now ask to answer to *Kingsley*, or to *Mr. Langdale*, we are under your Lordships' Direction: But we desire we may be asked, whether, upon the Debts he received from the Earl of Macclesfield, he did so, until on their Sums from *Kingsley* and *Boyer*?

*Mr. Chief.* I have told you that they had both voluntarily agreed of their own Accord to give 1500 Guineas, and I told my Lord Macclesfield of it.

*Mr. Serj. Popham.* I desire he must be asked, whether he did not, by Direction of my Lord Chancellor, he sent upon these Sums, and he would not receive under?

*Mr. Chief.* I did not. They asked me what I thought the Earl expected, I told them 1500 Guineas, as I mentioned before, they agreed to give it, and my Lord said he would take it.

*Mr. Serj. Popham.* At the Time when the Earl Macclesfield agreed to take these Sums, whether he did not insist upon the full of these Sums to be paid?

*Mr. Chief.* Yes, he did he would take them.

*Mr. Popham.* My Lord Macclesfield does not dissent in his Answer the receiving of a Payment in general, but as to saying what Sum in particular he received. Therefore I am apt to think the instruction the better of him, to be like the Answer, but that it is very proper to ask whether he had not given Instructions, that when any Master's Place was taken, or lost to a vacant, he should insist upon such a Price?

*Mr. Chief.* I had no Instructions: The Gentlemen came and talked to me, and proposed to me the Sum they were willing to give, and I had no objection to it. I had no particular Instructions.

*Mr. Popham.* When Submission, Mr. Gattopole has not answered the Question, and he is to leave to ask him further, whether he hath not taken money, that he received particular Directions from my Lord Macclesfield to justify upon such a Sum?

*Mr. Chief.* I cannot say but I have, and if you name the Masters, I can answer it not particularly.

*Mr. Serj. Popham.* I would ask him this Question, whether he has not exactly said, that he transferred some of these Affairs without my Lord's Direction?

*Mr. Chief.* I own it. I have said for I own it before your Lordships, that I did not that what I did he approved of.

*Mr. Serj. Popham.* I desire he may be asked this Question, to each distinctly, whether I am much as know any Thing of the matter as to any Sum offered by Mr. *Kingsley* or Mr. *Boyer*, till he told me the whole Sum?

*Mr. Chief.* Yes, now.

*E. of Mar.* Whether I had any Difference about Mr. *Kingsley* or *Boyer*, being admitted, or the Money they should give, all or not me they would give me 1500 Guineas?

*Mr. Chief.* No, not any Differences I told the Earl what they offered, and he was pleased to accept it.

*E. of Mar.* I beg leave to say he offered this other Question, since these Gentlemen have gone now upon that matter, whether or did not tell me, at the Time that Mr. *Kingsley* had he would give me 1500 Guineas, that he did not feel, if that was not sufficient I might please myself?

*Mr. Serj. Popham.* I hope the Question may be asked in general, when they have asked, let us try to interest the Masters for asking leading Questions, and hope his Lordship will be satisfied that he is leading.

*Mr. Chief.* That I have he may be asked, when Mr. *Kingsley* offered 1500 Guineas, whether he had any Thing concerning any further Sum?

*Mr. Chief.* I wish, both of my Remembrance, I speak it doubtfully, I am

not certain Mr. *Kingsley* told me, if the 1500 Guineas would be the Earl, he should kindly himself.

*E. of Mar.* I desire to know certainly, whether he told me to Mr. *Chief*. I am free I did.

*E. of Mar.* What did I say thereon?

*Mr. Chief.* Your Lordship told you would take 1500 Guineas, and would take no more.

*Mr. Popham.* I desire to ask this Question, How Mr. *Kingsley* offered more, or to think the Earl so sensible that the Earl expected to ask Mr. *Gattopole* how he came to offer from Mr. *Kingsley* more was asked?

*Mr. Chief.* I told you what my Lord Macclesfield put to me. I only told him so. But as to what Mr. *Kingsley* told me, that I speak only, it is at a considerable Time ago I cannot speak it positively, I doubtfully, so the best of my Remembrance it was for I told you the things before.

*Mr. Serj. Popham.* My Lords, we shall not trouble your Lordships with calling any more Witnesses on this Article, when it appears very plain, that he was intrusted to adjust the Prices, and whether they were as to him or my Lord is not material. As to this Article, and the Article relating to Mr. *Kingsley*, we shall leave it with this Observation: He pleaded to say in his Answer, as to the two Pretences received from Mr. *Kingsley* and Mr. *Boyer*, that he had said he did afterwards, and before the Impachment, deliver the same into the Court of Chancery, to the Court. All that we beg leave to put your Lordships in mind of, is, that from your own Journals it will appear, the Impachment was brought before the 15th of February 1724. When my Lord seems to show at that Time he paid the money, we apprehend it will be now Days after it. The next Article relates to Mr. *Primes* &c.

[Mr. *Chief* called.]

*Mr. Langdale.* My Lords, we desire that Mr. *Ellis* may be sworn, [sworn accordingly.]

*Mr. Langdale.* My Lords, we desire Mr. *Ellis* may be asked when he was admitted a Master in Chancery?—Mr. *Ellis.* My Lords, I was admitted the 24th Day of February last was twelve months.

*Mr. Langdale.* We desire he may be asked, whether he applied in Person to my Lord Macclesfield to be admitted into this Office, and whether he was upon Debts or Retainer?

*Mr. Ellis.* Upon the Death of Mr. *Officer* Fifteen Years of my Friend came to me, and put it into my Head that this Office might be a proper Office for me, and I took some Time to consider of it. I had some business at the Bar, and was very unwilling to quit it, but after one Day's Consideration I went to my Lord himself; I told him his Lordship's Office was fallen by the Death of Mr. *Officer*; if his Lordship thought me a proper Person, and I should be glad to have it. I was come to visit upon him about it. His Lordship said, he had no manner of Objection to me, he had known me a considerable Time, and he believed I should make a good Office.

*Mr. Langdale.* What farther Difficulty was there?

*Mr. Ellis.* My Lord at that Time desired me further to consider of, and come to him again. And so I did. I went back from his Lordship, and I came again in a Day or two, I believe it was the second after I came back from his Lordship, and told him I had considered of it, and desired to know if his Lordship thought fit to admit me; and I would make him a Prefect of 4 or 5000*l.* I cannot say which of the two I said, but I believe it was 5000*l.*

*Mr. Langdale.* What Answer did my Lord return, when you made him this Proposal?

*Mr. Ellis.* My Lord said, There is I, or You and I, my Lord was pleased to treat me as a Friend, must not be as a Bargainer.

*Mr. Langdale.* My Lords, we desire he may be asked, whether my Lord Macclesfield said in what manner he would treat with him, whether in a more familiar manner than any Body else?

*Mr. Ellis.* My Lord Macclesfield did say, that if I was desirous of having the Office, he would treat with me in a different manner than he would with any Man living; that were the Words my Lord said, to the best of my Remembrance.

*Mr. Serj. Popham.* After the Answer of my Lord Macclesfield, that they must not make Bargains, what further Application did he make?

*Mr. Ellis.* I made no further Application at all, but spoke to Mr. *Gattopole*, meeting him in *Windsor*—*Mr. Gattopole* said he had been at my Lord's, and my Lord was pleased to speak very kindly to me, and he proposed to give him 3000*l.* Mr. *Gattopole* answered, Guineas are better money.

*Mr. Langdale.* We desire to know what he paid, and in what manner, and in what Species?

*Mr. Ellis.* My Lords, I paid my Lord, and cannot say I paid it him, but put 3000 Guineas.

*Mr. Langdale.* In what Manner? Who did you pay it to?

*Mr. Serj. Popham.* After this Agreement with Mr. *Gattopole* to give him 3000*l.*, as being his Money, we desire he may inform your Lordship what he did pursuant to this, and what he carried with him?

*Mr. Ellis.* Upon this I immediately went to my Lord's: I was willing to get into the Office as soon as I could. I did carry with me 3000 Guineas in Gold and Bank Notes: I am not certain whether there were 3000 Guineas in Gold or not, but I think there was three, and the Balance of the money was in Bank Notes. This I brought to my Lord's House.

*Mr. Serj. Popham.* My Lords, we desire he may be asked, what he were put into, or in what they were carried?

*Mr. Ellis.* I had the money in my Chambers. I could not tell how convey it: It was a great Burthen and Weight; but recollecting I had business in my Chamber, I put the Guineas into the Basket, and the next day when I went in a Chair and took with me the Basket in my Chair. When I came to my Lord's House I gave Mr. *Gattopole* there, and I gave him the Basket, and desired him to carry it up to my Lord.



Mr. Serj. Popham. What Answer did he return?  
 Mr. Ede. I saw him go up Stairs with the Basket, and when he came down he intimated to me that he had delivered it.  
 Mr. Lancelot. My Lords, we desire he may be asked, whether he acquainted Mr. Catteghen with what was in the Basket?  
 Mr. Ede. I did not.  
 Mr. Serj. Popham. After Mr. Catteghen came and acquainted you he had delivered the Basket, how long after that was it before you saw my Lord?  
 Mr. Ede. I did not see my Lord after that till I was sworn in.  
 Mr. Serj. Popham. How long was that after?  
 Mr. Ede. I cannot be positive, but it was within a Day, either the next Day, or at least, it was the next Day after.  
 Mr. Serj. Popham. I desire he may be asked, when Mr. Catteghen returned down Stairs, after the Delivery of the Basket, what he said to him about the Time of his being admitted?  
 Mr. Ede. I do not remember he said any thing to me about my being admitted: I took that for granted.  
 Mr. Serj. Popham. And when he was admitted, whether he was admitted in the Closet, or in what Room?  
 Mr. Ede. When I was to be admitted, my Lord invited me to Dinner, and four of my Friends with me, and he was pleased to treat me, and four Members of the House of Commons, in a very handsome manner: I was at Mr. Dancers house in before then.  
 Mr. Serj. Popham. I desire also Whether he had the Basket again?  
 Mr. Ede. Some months after I spoke to my Lord's Gentlemen, and asked them, how he had the Basket, that he would give it me back; and they said, he had it.  
 Mr. Serj. Popham. And how it returned in it?  
 Mr. Ede. Yes, my Lords, that was not.  
 Mr. Lancelot. There is one Thing in the Earl's Answer, that he retained only Part of the Money to make him by Mr. Ede. I perceive the Gentleman thought the other side do not ask any Questions about it; if they desired, the B. L. L. L.  
 Mr. Serj. Popham. I desire to know what Mr. Catteghen did say, also, to and from the B. L. L. L. and come down again?  
 Mr. Ede. The business is, I remember, he had nothing to me, but a few words, and he intimated to me that he had delivered it to me, and that I should say to any particular Discourse, but I remember that he had delivered it.  
 Mr. Serj. Popham. My Lords, if they have done with Mr. Ede, I would beg leave to ask him one question, and that is in relation to what the impudent Law Clerk is his Answer, that he returned of the Present from my Lord. Mr. Ede says more than the sum of signed. We desire therefore that he may be asked, how much was returned to him of the 5000 Guineas which he at first paid?  
 Mr. Ede. 5000.  
 Mr. Serj. Popham. When was that returned again to him?  
 Mr. Ede. In November last, to the best of my Remembrance.  
 Mr. Lancelot. In what manner was that Money returned to him?  
 Mr. Serj. Popham. We have not yet done with him. I desire to know when you went out of Town, and when you returned; and how long after your Return was it repaid?  
 Mr. Ede. It was repaid to me, to the best of my Knowledge, within three, four, or five Days after my Return. As soon as I came from the Country, the Earl took notice of it, and said that he would repay me: For some Time in May before, or thereabouts, the noble Lord had taken notice, that he had received this Present from me, and he would make me exceedingly easy.  
 Mr. Serj. Popham. This was before you went out of Town?  
 Mr. Ede. Before I went out of Town.  
 Mr. Serj. Popham. When did you return to Town?  
 Mr. Ede. I returned the 19th, 20th, or 21st of November.  
 Mr. Serj. Popham. How soon after you came to Town did you see my Lord?  
 Mr. Ede. Very soon after I came to Town.  
 Mr. Serj. Popham. What Discourse had you with him about it?  
 Mr. Ede. My Lord told me he would return me my money again; he did not say all, but he would return me my money; and that he had done it before, had it been considered.  
 Mr. Serj. Popham. How soon after this Discourse was it that the money was returned?—Mr. Ede. I believe two or three Days.  
 Mr. Lancelot. If the Gentlemen have done, I desire he may be asked, in what manner this money was returned, and by whom?  
 Mr. Ede. After this Discourse, my Lord Porter sent for me, my Lord Chancellor was then at my Lord's house, and told me my Lord Chancellor had desired him to pay to me 5000l. and he did pay it.  
 Mr. Lancelot. My Lords, if I understand Mr. Ede right, he said there was something mentioned by my Lord of this Kindness before he went into the Country. I desire he may be asked, Upon what Occasion he was going into the Country at that time?  
 Mr. Ede. I desire that he may first answer in what manner, by whom, and where, this money was repaid to him, whether in money, or in what?  
 Mr. Ede. To the best of my Remembrance it was paid in that manner, there was sent to me a Bank Note, and 2000l. in India Bonds.  
 Mr. Lancelot. Who was this paid by?  
 Mr. Ede. By my Lord Porter.  
 Mr. Lancelot. Whether he gave any Receipt for the money, or any Part of it, and to what effect?  
 Mr. Ede. When my Lord paid me the money, he said my Lord Mordaunt had ordered me to be paid the money; but his Lordship said nothing to me, therefore he had ordered him to make it up, and he gave me two thousand Pounds out of his own money, and that as 2000l. of it was my own money, he desired me to give a Note of the Receipt of it.  
 Mr. Serj. Popham. Whether was that Note, a Note for Repayment of the money, or a Receipt?  
 Mr. Ede. It was not for Repayment, that I remember; but it was an Acknowledgment of the Receipt of the money, that I had received for such.

Mr. Serj. Popham. Whether it did not contain a further Acknowledgment for Repayment?  
 Mr. Ede. Not that I know of.  
 Mr. Serj. Popham. Was it paid upon whose Account the money was paid?  
 Mr. Ede. Yes.  
 Mr. Serj. Popham. We desire he may be asked, How many Days before he was so produce the Balance of his Cash before the Commissioners that he received this money?  
 Mr. Ede. I cannot say how long before; it might be a Fortnight or three Weeks; I cannot say; it was not long before.  
 Mr. Serj. Popham. Whether it was not necessary for him to make use of this money, in order to make up this Balance?  
 Mr. Ede. I will answer that Question as well as I can; I did make use of it to that Purpose, in having it by me; but I was not so poor as to be put to a Necessity of so doing; I could have had the money any where of any body that knew me.  
 Mr. Lancelot. My Lords, I desire he may be asked, Whether he can remember the particular Time to a Day, when it was repaid him?  
 Mr. Ede. Upon my Oath, I cannot tell the particular Time.  
 Mr. Lancelot. Was it after the Inquiry was directed to be made by the Lords of the Council?  
 Mr. Ede. Yes, my Lords, I was in the Country when the Inquiry was directed to be made, and a month after.  
 Mr. Lancelot. I mentioned a Question before; Mr. Ede was mentioning that my Lord Mordaunt had said to him before he went out of Town, that he would make him exceedingly easy; I desire he may be asked where he was then going, and upon what Occasion?  
 Mr. Ede. My Lords, I was going into Staffordshire, where the little Effects I have in the world lie.  
 Mr. Lancelot. I would know upon what Occasion?  
 Mr. Ede. I never missed going into the Country the Beginning of August, for these ten Years past.  
 Mr. Lancelot. Whether there was any particular Occasion for his going down into the Country at that Time?  
 Mr. Ede. If your Lordships are of Opinion that this is a fair Question, I will as fairly answer it. I went down to my little estate, to look into what little Affairs I had there. I called at Staffordshire, and there declared myself a Candidate for the Election that was to ensue.  
 Mr. Lancelot. We desire he may be asked, when he returned?  
 Mr. Ede. I returned about the 19th or 20th of November.  
 Mr. Lancelot. Mr. Ede says, when my Lord Porter paid him, he had a Note from him, acknowledging the Receipt of the money; I desire to know, Whether that Note was taken up again, and when?  
 Mr. Ede. The Note I gave my Lord Porter.  
 Mr. Lancelot. Yes.  
 Mr. Ede. My Lord Porter sent for me, and gave me the Note again. I do not know to what I gave my Lord Mordaunt till after I had from Lord Porter, and he had given me up the Note again.  
 Mr. Lancelot. I desire he may be asked, When the Note was delivered up to him?  
 Mr. Ede. That was asked before; I cannot tell the Day.  
 Mr. Lancelot. It was never asked here before: The Question I ask is, When the Note was delivered up?  
 Mr. Ede. I do not remember the Day.  
 Mr. Lancelot. As near as you can.  
 Mr. Ede. In the Beginning of December.  
 Mr. Lancelot. I beg leave to ask one Question: He says that he applied this money, which he received of my Lord Porter, towards making good the Balance of his Account; Whether or no, he did not first refuse to swear to the Balance of that Account; and what was the Occasion of it?  
 Mr. Ede. When I had delivered in my Account, the Question I was asked, the first Time, was proposed to me, not by any of the Judges who were appointed to inspect our Accounts, but by Ser. Nisard, Gould, who proposed it in such a manner, that I could not by any means take it. He asked me, Whether I owed any thing? and I was to answer I owed nothing: I told him I could not swear any such thing. I had some Arguments with him about the Absurdity of such an Oath, and said, If I owe a million of money that is nothing to the purpose; I have in the money due on the Balance of my Account; I deliver it to you; I laid the money upon the Table, and insisted upon leaving it with them.  
 Mr. Lancelot. Whether that Note was delivered to him after he refused to take the Oath?  
 Mr. Ede. It was.  
 Mr. Lancelot. Whether that Note was not the Occasion of his refusing to take the Oath?  
 Mr. Ede. I cannot say but it was an Ingredient in it.  
 Mr. Lancelot. I would be glad to know where this Note is?  
 Mr. Ede. When my Lord Porter delivered it to me, I laid it up, and put it in my Pocket: My Lord asked me why I did not answer, I would keep it as a Memorial of my Lord Chancellor's Favour to me; but when I came home, considering that it would be of no Service, and that it might be dangerous to keep it by me, I sent it.  
 Mr. Lancelot. I desire he may be asked, Whether he did not look upon himself extremely obliged and obliged by my Demand on Account of that money, or did think himself bound to answer it?  
 Mr. Ede. I do not think myself bound to answer it.  
 Mr. Lancelot. Whether he apprehended it to be a free and perfect Gift?  
 Mr. Ede. I do, my Lords.  
 [Mr. Catteghen called again.]  
 Mr. Serj. Popham. My Lords, we left the Basket in the Hands of Mr. Catteghen; therefore it is necessary that Mr. Catteghen should be sworn in, or Lordships what became of it afterwards, what he said about the Basket after he had it from Mr. Ede?  
 Mr. Catteghen. My Lords, I carried it up to my Lord, and set it down in his Study.  
 Mr. Serj. Popham. What did you say to my Lord?  
 Mr. Catteghen. Nothing. Mr. E. ordered me to carry up the Basket, I carried it up, and then I set it down. I never saw it afterwards.







Mr. Serj. Parg. I desire he may inform your Lordships, since he paid the money, why he did not pay the Principal?  
 E. of Newcastle. I believe it would have been your Lordships' time, if Mr. Serj. Parg. had said all his Questions in such a Manner, as not to imply foregone conclusions, not affirmed, or said by the Witness. The Question which was put to him, was, whether the proper Question is, still to ask if a principal Sum was demanded; and whether it was, or was not answered, and by what Oath?

Mr. Serj. Parg. I apprehend that Mr. Thynne says, That Creditors come to him, Masters of the Court, and he could not pay any more than the law allows. I apprehend they came to him for the Money lodged the last time. Therefore I desire he may be asked, whether any Person has demanded their Money yet?

Mr. Thynne. I desire he may be asked, Whether any demanded the principal Sum, and by what Oath?

Mr. Serj. Parg. I desire to ask my own Questions; I apprehend I am not to be denied in the asking my Questions by the Lord impeached. I desire to ask what Sum he applied, and what Sum they demanded?  
 Mr. Thynne. The Name of the Sum I can't recollect; I believe it was necessary to trouble your Lordships with them. The Sum demanded was only half the Money. The principal Sum for which I paid my Lord, so much of my Remembrance, was good. There was no Demand made of principal Money to be paid. But there might be Enquiries made, I believe, by a noble Peer of this House, which I was to inform him, that I could not inform his Lordship of the State of the Enquiry there.

Mr. Thynne. Mr. Thynne says, he desired to know why, or by whose Advice, he desired paying?

Mr. Serj. Parg. It was upon a prudential Reason I did do it; because, upon a prudent Inquiry was set on foot, I did not know how far I might be misled, as being made answerable myself for it.

Mr. Popham. Whether he had any suspicion that there was a Deficiency in Mr. Berr's Office?

Mr. Thynne. There was a Suspicion that there was not competent Money to satisfy all the Statute Demands.

Mr. Erskine. I desire he may be asked, whether there was not an Order for transferring the Effects in Mr. Berr's Hands to him?

Mr. Thynne. Upon the Admission of every Master, there is an Order signed by the Lord Chancellor, to transfer the Effects to the Receiver.

Mr. Justice. I ask if any such Order came to him?

Mr. Thynne. There did, my Lords.

Mr. Justice. Was there any Transfer of the Effects according to that Order?

Mr. Thynne. No, there was not a complete Transfer.

Mr. Justice. As you say it was, as usual in the Case of other Masters, that have been removed, and are able to transfer; or in Case, upon Death, upon their Representatives are able to do it?

Mr. Thynne. The Reason it was not done, I conceive, was, because it was impracticable, there being no Representative of my Predecessor, no Administration being taken out.

Mr. Serj. Parg. I desire he may inform your Lordships, whether he was not applied to by a noble Peer of this House, concerning some Effects deposited in the Hands of Mr. Berr, and what account he then gave to the State and Situation of the Office?

Mr. Thynne. I am really very sorry to trouble your Lordships on Oath. What it is to me what this Gentleman said? He is now upon his Oath, and to give to your Lordships an Account what he knows, but to ask him what he had at such a Time, to affect me, I hope they will not insist upon it.

Mr. Serj. Parg. When he has declared what he said, then there will be another Question, Whether that was true in Fact? And that Question will then affect the impeached Lord.

E. of Arundel. If Mr. Serj. Parg. will ask a proper Question first, he may; but he should not ask an improper Thing, because he will ask a proper Question afterwards.

Mr. Serj. Parg. We apprehend it is proper Evidence to be given, that he gave such an Account of the Office, in answer to the noble Lord: Therefore I desire to know what Account he gave to that noble Lord?

E. of Arundel. My Lords, I humbly oppose that Question, and desire your Lordships Judgment, whether he is to ask what this Person said?

Mr. Justice. I believe the same End may be obtained by asking a Question without Dispute, and to which there can be no Objection; that is, Whether or no he had any Reason to think that there was a Deficiency in the Office, and what those Reasons were?

Mr. Serj. Parg. My Lords, we beg leave to oppose that Question: What private Opinion may be, is no Evidence; he and another may think differently of the same Matter. They are to ask him as to Fact, and not as to Opinion.

Mr. Popham. I have not had the Happiness to be bred a Lawyer, and therefore may be mistaken as to legal Evidence; but surely, when your Lordships are examining a Person in the Deficiency of his own Office, you can give a better Account than himself. I desire he would answer whether he knew, whether he had the complete Money of Mr. Berr's transferred to him?

Mr. Justice. The complete Money of the Office hath not been transferred to me, and for the Reason I have mentioned to your Lordships; for want of an Administration.

Mr. Wm. Boscawen. I would beg leave to ask Mr. Thynne one Question, and I beg a material one. Whether, on his Admission into that Office, he did not find a great Confusion in it?

Mr. Thynne. I can't say that upon my Admission into that Office I found great Confusion in it, because all Papers that came within my View were very regular, and well adjusted to dispatch Business upon.

Mr. Wm. Boscawen. I desire he may be asked, Whether, if he had known the State of this Office, he would have given five thousand Guineas for it?

Mr. Thynne. If I had known the State of the Office, and the Confusion of it, as appear at this Time before your Lordships, rather than

have given good, for it, I would have given good, to have been without it.

Mr. Serj. Parg. Of the Money he paid or left at the time he mentions, on my Lady Macclesfield's Table, I desire to know if he received any of it back again?

Mr. Thynne. I received back again, from the Lady Macclesfield, the Sum of 350*l.* in Bank Notes, the same as I enclosed, when I left it.

Dr. Sear. Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money came to be returned? Have a full Account of that whole Transaction.

Mr. Thynne. Soon after my Admission, and as soon as I could adjust the Affairs of my Office, it being the latter End of Summer, and little Business being, I went into the Country for my Health. The Servant I left in Town, sent me word, that there were several Messages from my Lord Chancellor, that he supposed might be of Importance. As soon as I could conveniently, I returned to London, and in a Day or two went myself to my Lord Chancellor's House, and I went to know what the Occasion of those Messages was. They said, it was not from my Lord Chancellor, but it was a Message from my Lady Macclesfield. Upon that I immediately after waited upon her Ladyship. She informed me then, that she did not know that I had left so long a Period with her, as she found it was: And declaring I should be aided with Honour, she returned to me 350*l.* and the other Part, she said, she would appropriate to her own Use.

Mr. Serj. Parg. We desire Mr. Thynne may be asked, if there was any notice taken of any Order or Direction from my Lord Chancellor about Re-payment of the Money? or whether it was only a Transfession between him and my Lady Macclesfield?

Mr. Thynne. There was no Notice taken of any Order from my Lord Chancellor; rather an express Desire that my Lord Chancellor should never be acquainted with it.

Mr. Sear. I would ask when this Money was returned?

Mr. Thynne. The time when the Money was returned, was about the middle of October.

Mr. Com. Serj. I desire he may be asked, whether at the time he first applied to Lady Macclesfield, he had seen the Paper that Bank Bills were in on the Table, before he received any Answer from my Lady, or afterwards?

Mr. Thynne. I laid down the Bank Bills on the Table, to the left of my Remembrance, at the time of my coming away, and taking leave.

Mr. Com. Serj. Whether they were included in a Paper?

Mr. Thynne. They were included in a Paper, and also sealed up.

Mr. Com. Serj. Whether they were opened during the Time he was there?

Mr. Thynne. No, they were not.

Mr. Com. Serj. Or taken up by my Lady during that Time?

Mr. Thynne. No, my Lords, I don't remember they were.

Mr. Com. Serj. Whether he carried the particular Sum to her Ladyship?

Mr. Thynne. No, my Lords, not in the least. I did not give any Intimation what Sum was included.

Mr. Sear. I desire he may be asked, whether he can remember that my Lady did or did not open it, before he went away?

Mr. Thynne. To the best of my Remembrance it was not opened before I went out of the Room.

Mr. Sear. I desire he may be asked this further Question, Whether he apprehended that my Lady Macclesfield was acquainted with the Contents till after he was gone?

Mr. Thynne. I did not apprehend that my Lady Macclesfield was acquainted with the Contents of it till afterwards.

Mr. Wm. Sear. Since that Gentleman hath been asked concerning his Apprehension, I desire he may be asked another Question of the same kind, which is, Whether he apprehended he should have been admitted, if he had not left the money?

Mr. Serj. Parg. We submit it to your Lordships, whether that be a fair Question.

Mr. Wm. Sear. Really I think it is a proper Question, upon the Foundation of the Question asked before. The former Question was, whether he apprehended my Lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that Sum?

Mr. Thynne. I do not apprehend, that if I had come without the money, I should have been admitted. But if the Notes had been returned to me without any other Answer, then I should fully have apprehended that I should not have been admitted.

Mr. Justice. I desire he may be asked, whether he had any particular Acquaintance with the Lady Macclesfield before?

Mr. Thynne. I had not that Honour.

Mr. Justice. Whether he had ever seen her, or been in her Company before?—Mr. Thynne. My Lords, I believe I never was.

Mr. Justice. My Lords, we desire he may be asked, what he apprehended was the Reason of 350*l.* being returned to him?

Mr. Thynne. I know not whether I should trouble your Lordships with my Apprehensions, they may not be just; but so far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Mr. Serj. Parg. I desire he may be asked, when the 350*l.* was returned, in what Month it was?—Mr. Thynne. It was in October.

Mr. Serj. Parg. Whether he can recollect in what Time of the Month?

Mr. Thynne. I believe it was about the Middle of October, to the best of my Remembrance.

Dr. Sear. My Lords, we desire he may be asked, whether the return of this Money was before or after the then first Seal before Archbishop Ten?

Mr. Thynne. To the best of my Remembrance, the first Seal was about the middle of October, and it was returned before the first Seal.

Mr. Serj. Parg. My Lords, I desire he may be asked, whether there was any message sent about the returning of the Money, before the Return was made?

Mr. Thynne. I have acquainted your Lordships that several Messages passed, while I was in the Country.

Mr. Justice. When he waited upon my Lady Macclesfield, after his Return out of the Country, I desire he may be asked, whether the mentioned any Thing to him of the Return of those Messages?

Mr. Thynne.



Mr. Thynne. She mentioned the Reason, and said, That it was to return the Money, which the said was too large a Present, and that she was afraid my Lord Chancellor should come to the knowledge of it.

Mr. Serj. Prynne. I desire he would inform your Lordships, when he went to Kensington to my Lady Macclesfield, where my Lord Macclesfield was?

Mr. Thynne. When I went to Kensington to my Lady Macclesfield, my Lord Macclesfield was then engaged in the Business of the Court of Chancery, at the latter end of the Summertime, or first Seal after Michaelmas Term.

Mr. Serj. Prynne. In what Place of Health was my Lord Chancellor at that time? Had he not continued some time before at London, and not at Kensington?

Mr. Thynne. My Lord Chancellor, by the enquiry I made, was at that time in London.

Mr. Serj. Prynne. How soon after your Admission did the Lord Chancellor go into Oxfordshire?

Mr. Thynne. The very Day after my Admission, my Lord Chancellor went into Oxfordshire, as I was informed by one of my Lord's Officers, who came to me that Day upon some Business.

(Mr. Cunningham again called.)

Mr. Serj. Prynne. My Lords, I desire Mr. Cunningham may be asked, Whether, upon the Proposal of 5000 Guineas made to him by Mr. Thynne, he acquainted my Lord Macclesfield with it?

Mr. C. I acquainted my Lord Chancellor with the Proposal made by Mr. Thynne of 5000 Guineas.

Mr. Serj. Prynne. Whether did he approve of it, or reject it?

Mr. C. I was not very certain, whether the Earl did not say he would take time to consider of it. But in the main, according to my Apprehension, the Earl seemed to approve of it.

Mr. Serj. Prynne. I desire he may be asked, Whether he received any thing for my Lord Macclesfield's Use upon Mr. Thynne's Admission?

Mr. C. No, my Lords, I received nothing but my own Fees.

Mr. Serj. Prynne. If he received nothing, Whether he received any Directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Mr. C. The Earl was pleased to tell me, he had a design to have given that Place to Dr. Sayer, but he was at that time in the County, out of Town, at Danbury: he proceeded to fix as to order me to take no Money of Mr. Thynne.

Mr. Serj. Prynne. When was that?

Mr. C. Very soon before he was admitted.

Mr. Serj. Prynne. My Lords, we submit this as Evidence of the Lord's knowing of the Receipt of this Present of 5000 Guineas.

Mr. Lard. My Lords, I desire to know of Mr. Cunningham, Whether my Lord Macclesfield had any acquaintance with Mr. Thynne before this Proposal?

Mr. C. I can't say as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. Prynne. I desire he may be asked one Question, Whether he made any Difficulty of accepting his Fees on Mr. Thynne's Admission?

Mr. C. Yes, I did.

Mr. Prynne. And why?

Mr. C. The Earl ordered me to take no Money of him. Upon that general Order I made a little Difficulty, and told him of it; the Answer he made me was, Why should I make any Difficulty, when he had been thus so long acquainted with my Lord Chancellor?

Mr. Prynne. Whether at that time, when he first mentioned the 5000 Guineas, it was not a Day or two before his Admission?

Mr. C. I believe it was a Day or two before his Admission.

Mr. Serj. Prynne. My Lords, we have done with Mr. Cunningham, since the name of Dr. Sayer is mentioned on this Occasion, when the noble Earl declared he would comply with the Place that still vacant, I desire this Witness may be asked, Whether that was a real Compliment to Dr. Sayer, or whether Dr. Sayer made any Application, or was to give any Thing for it?

Mr. C. I believe, if Dr. Sayer had been then in Town, my Lord would really have made him a Compliment of it without any Pretence. My Lord told me Dr. Sayer was his particular Friend, and he had a great Value and Respect for him.

Mr. Prynne. My Lords, I beg Leave to ask a Question upon that Question. He says he thought my Lord Macclesfield would have given it him for nothing; I ask him, if he then thought he gave it Mr. Thynne for nothing?

Mr. C. The Answer I can make to that Question is, That I did not apprehend my Lord was so well acquainted with Mr. Thynne, as to give it him for nothing.

Mr. Serj. Prynne. I desire he may be asked, Whether he did not represent to the Earl of Macclesfield, that there was a necessity for the immediate putting Matter into that Office for the dispatch of Business?

Mr. C. I did represent it to the Earl, that it was necessary to put something into that Office, for several Reasons had been with me about that Office; and otherwise the Business might be transferred to another Office, which would have been a great prejudice. Upon that the Earl said, Mr. Thynne should be admitted.

Mr. Serj. Prynne. Whether you had no application from the Sutors themselves, and whether there was not a Complaint from them on Account of the Step it was to Business?

Mr. C. Yes, there was; it happened to be in the long Vacation; and something, I said the Earl, must be done; there was an absolute Necessity to come to some Resolution or other on the matter.

Mr. Serj. Prynne. Is this Article, as an aggravation, it is alleged, that Mr. Berret did insolent: We beg Leave to call some Witnesses to give an account of the State of the Office at his Admission, and afterwards at the time of his Death.

(Mr. Meller called.)

Mr. Serj. Prynne. My Lords, we desire Mr. Meller may be asked, What Sutors on Cash and Effects he delivered over to Mr. Berret, at the time of his coming into the Office?

Mr. Meller. My Lords, I take it to be about 120,000*l.* I refer myself to the Account given in to the Judges, and Directors of the Bank, and signed by my Hand.

Mr. Serj. Prynne. My Lords, we submit it, whether this is regular, to

examine it on an Account Five Feet, which Account hath been reduced into Writing?

Mr. Serj. Prynne. Surely the Witness may make use of his own Paper to refresh his Memory.

E. of Macc. I don't know what these Gentlemen intend. They are reading a Charge against Mr. Berret, to show what was delivered over to him, at the time he came into the Office. It is expected I should be asked to give an Account what was paid to him, or by him, while he was Mr. Meller? That I should give an Account of his Effects and Effects, while he is, and of those who were sufficient to pay, in his Hands, or not? If these

Gentlemen had any Order of the Court, in which this had been done, and intitled, that might have been something. It is impossible for me to enter into it.—It appears he did intitle, Administration was not granted till a great while after his Death; and still very lately: What Account hath been taken of his Effects I don't know, nor can any say how few.

They are beginning with an Account, which I apprehend is not proper Evidence to be given as against him, to prove that this Gentleman had not Effects sufficient to answer the Demands upon his Office.

Mr. Serj. Prynne. My Lords, this Evidence relates to an Account delivered in by the approbation of the Lord impeached, on the 14th of January, before the Lords of the Council. As this Account was delivered in before them, we apprehend, so far it is a proper Evidence, and the Foundation for a further Enquiry, how much of it remains in the Office. We shall ask other Particulars afterwards as to the Deficiency. All the Use we now make of it, is, to show the great Sum that was at first transferred over to him.

E. of Macc. My Lords, if they meant only to satisfy your Lordships, by showing how great a Sum there was in that Office, it is of the greatest importance.

Mr. Lard. All that we intend to prove now, is, what was so notorious at the time of Mr. Berret's Death; that there was a great Debt owing, and that he did insolent, and the Earl gave a great way in the Matter in his own Answer. He says in his Answer, That on the 14th of January, in default Mr. Gifford and Mr. Berret to enquire into his Effects, and to enter a proper Charge in the protective Court, to prevent Administration being granted to any Person who might embrace the said Administration, and in other Administrations to be granted to some of the Beneficiaries of the Sutors of the Court. This goes a good way, I apprehend, to intitle your Lordships to believe, that there were those Sutors, which are unusual in the Case of a Man's Solvency. Therefore, what we would ask is, that the Witness would give an Account, what he knows concerning the Discharge in this Office, or give an Account of such Circumstances, as may induce your Lordships to believe there was such a Deficiency.

Mr. Serj. Prynne. If the Gentlemen who appear on the behalf of the House of Commons think fit to rely upon our Answer, they may do so.

Mr. Serj. Prynne. I think Mr. Meller hath proved that he transferred 120,000*l.* to Mr. Berret; we will now go on, and prove the Deficiency.

Mr. Serj. Prynne. Mr. Meller hath spoke Five Feet, in a Matter where we apprehend a capable of much better Proof; therefore we hope what he has said shall not go for Evidence. There must have been a Schedule, and he has the counterpart of that Schedule, by which the Effects were delivered over.

Mr. Meller. Mr. Meller hath a Paper in his Hand; I desire to know what that Paper is?

Mr. Meller. The Paper I have before me, is the very Account of the Money delivered to Mr. Berret, and the second Thirt when it is made by way of Schedule. There is another Paper by way of Abstract, I drew them together at the time I delivered it to the Judges. I had not time to draw out the full Account, and therefore I made an Abstract; both which are signed.

E. of Macc. The noble Lord asked the Question exceeding proper. The Question asked is, What this Paper was? Perhaps it is the very Account Mr. Berret and he made up between them, and signed. I ask, therefore, Whether it is the Account between them, or whether it is an Account of his own drawing up since?

Mr. Meller. This is the Account I drew up from my Books, of which Mr. Berret had a Duplicate. I needed all these Books, and likewise proved the Payment of the Money by Goldsmiths and Bank Notes.

Mr. Serj. Prynne. We apprehend that this is as full Evidence as can be had before your Lordships.

Mr. Serj. Prynne. We submit it, Whether your Lordships are of Opinion, that this is proper Evidence? Mr. Meller hath been proposing Paper, which is not the original Account delivered; it is not the Book but a Copy of the Book taken out, and given in Evidence in another Place: Now he would by this Evidence, signed by himself, charge Mr. Berret with Money delivered over to him; but as it is an Account only signed by Mr. Meller, we submit it, Whether it can be any Evidence at all?

Mr. Serj. Prynne. We beg Leave to shew it to be proper Evidence. When a Person makes up an Account of his own Hand-writing, and draws it up, and swears that to be a true Account upon his own Knowledge, Whether this is not proper Evidence?

E. of Macc. This Gentleman has really given his Evidence, though it was objected to. It will be a proper enquiry hereafter, when we come to consider the Evidence that hath been given, Whether it be good Proof of what it is brought for?

Mr. Serj. Prynne. We shall reserve our Objection to the last.

Mr. Serj. Prynne. They may reserve what Observations they please, if an Objection to be made now, or not at all.

Lord Lardner. It would be of some Service to prevent mispending your Lordships Time, if the noble Lord would distinguish between Objections and Observations; for a great deal of Time has been taken up in Observations on Evidence, which are proper afterwards in the Defence.

(Mr. William Thompson called.)

Mr. Serj. Prynne. My Lords, this is one of the Gentlemen, who, by the consent of the Lord within the Bar, as well as of the rest of that Convention did examine into the Accounts of the Masters in Chancery; and we beg Leave to ask him, In the account delivered in before the noble Lord himself, what appeared to be the Deficiency upon Mr. Berret's Account?

E. of Macc.







was so much, and that he disposed of a Place, which was the *Placet of Tied-Bare*, for which he had, as I have been informed, 4000*l.* And these were the Reasons that induced me to believe there would be no Deficiency; and I knew very well that I could say by my own Knowledge, Mr. *Barnet* lived at no extravagant rate, for I am sure all the Time he was a *Minister*, and in *Town*, he never spent 200*l.* a Year.

*Sir Wm. Strick.* He says, he has heard he had 400*l.* a Year in Land? Does he not as well know that that Estate was settled upon his Family and Children?

*Mr. Goff.* I have heard that, upon his *Marriage*, some part of it was settled, but whether all be settled, or not, I can't tell.

*E. of Macc.* It seems this Gentleman says, he did not spend 200*l.* a Year. How came you to imagine that he should spend no more than 200*l.* a Year?—*Mr. Goff.* He told me so.

*E. of Macc.* Where was his Family?—*Mr. Goff.* In the County.

*E. of Macc.* With whom?

*Mr. Goff.* With his Lady's Father; and when he was in *Town*, he had private Chambers in the Temple, and only kept one Servant, and one Horse.

*E. of Macc.* I desire he may be asked, Whether he did not once intend and propose himself to take out Administration to Mr. *Barnet*, and if he did not take these Steps towards it?

*Mr. Goff.* I had in great concern for the Office, and the Securities not being transferred to a proper Hand, that I was willing to take out Administration, rather than that there should be any clamour on account of the neglect of Business in the Office. But, my Lords, upon considering the Matter, I did not apprehend that I was fit to be a Person for that purpose. I was not very young myself, I had two Children, and those young; I apprehended that if I should drop off before things were settled, the Case might be still the same as I found them. Therefore, I desired I might have somebody joined with me as this troublesome Affair, for I did foresee a good deal of Trouble in it. However, I had I was willing to engage in it, if my Brother *John Bower* were joined with me, rather than there should be any clamour upon the Office; and I persuaded him to do the same; and accordingly, I went down to the Commission, to see if Administration could be granted to us two. The Relations in the Country, and those People concerned for them, were very willing that Administration should be granted to Mr. *Barnet* and myself; and accordingly Process was sent to cure the Children; and that done, as I am informed, Sentence was given, that I and my Brother *Barnet* should have the Administration.

But then this unhappy enquiry coming out, we did not know what Situation we might be in, and for that Reason I declined it.

*E. of Macc.* Was Mr. *Barnet* a Worthy Man, or of the deal?

*Mr. Goff.* His Lady said a smooth before him.

*E. of Macc.* What Age are his Children?

*Mr. Goff.* The Eldest is about three Years old, and the Youngest about two, as I am informed; I never saw them.

(*Mr. John Bernet was called and sworn.*)

*Sir Wm. Strick.* The Question I desire he may be asked is, Whether he did not, upon the enquiry into the Affairs of Mr. *Barnet*'s Office, apprehend that there was a Deficiency?

*Mr. J. Bernet.* I did hear it Reported that there would be a great Deficiency in that Office, at the Time I was desired by my Lord *Macclesfield* to look into it; and I was likewise informed soon after, that there was like to be no Deficiency.

*Sir Wm. Strick.* I desire he may be asked, How he found it?

*Mr. J. Bernet.* I found his Papers and Accounts in the usual Confusion. His Accounts were mostly in loose Papers: There was one Book indeed, but that extended no further than to the Christmas before his Death, which was near three quarters of a Year before he died. Mr. *Goffrey* desired I would join with him in taking out Administration; after a good deal of enquiry, which I did consent.

*Sir Wm. Strick.* I desire one Question more. He says he was informed from after, there was like to be no Deficiency in the Office. I desire to know, Whether he did inform the Earl of *Macclesfield* there was like to be no Deficiency?

*Mr. J. Bernet.* No, I did not; but I did inform him, that there was not a great Deficiency as was reported, which was 25 or 30,000*l.* I could make no regular Computation, every Thing was in the usual Confusion, as I acquainted my Lord.

*E. of Macc.* I desire he may be asked, Whether he did not inform me, that he found some Stock in *Barnet*'s name, in the Books of the several Companies, than he could find charged upon him in the Office?

*Mr. J. Bernet.* Not to my Remembrance; for I did not look into the Stocks of the Companies; that was Mr. *Goffrey*'s Business.

*E. of Macc.* You then look'd into his Books?—*Mr. J. Bernet.* I did so.

*E. of Macc.* Then upon your looking into his Books, and Mr. *Goffrey*'s looking into the Companies Books, and comparing them together, I desire you would inform my Lords, whether you did not take more to be in his Name, than he was charged with in the Books of the Office?

*Mr. J. Bernet.* Upon Mr. *Goffrey*'s Account there appeared, upon calling it up, to be more Stock in his Name than the Securities he was answerable for to the Court.

*E. of Macc.* He has said, he could not tell what the Deficiency would be, because he could not make up a regular Account; I desire he may be asked, Whether he did not tell me that he believed there would be no Deficiency?—*Mr. J. Bernet.* No, I did not.

*E. of Macc.* Did you not upon your Oath?

*Mr. J. Bernet.* After Mr. *Barnet*'s Death, I did say to several People, when they were clamorous, that whether I led it by my Lord *Macclesfield*, I can't tell, that upon the best account I could make of his confused Affairs, there would be a Deficiency of 4 or 5000*l.* and I believed so much.

*Mr. Gm. Serjt.* The Mr. *Barnet* did not look into the Books of the publick Companies; yet whether he did not examine at the Exchequer upon that Occasion?—*Mr. J. Bernet.* Yes.

*Mr. Gm. Serjt.* I desire he may be asked, Whether he did not tell Mr. *Goffrey* afterwards, that upon what appeared, there would be no Deficiency?

*Mr. J. Bernet.* No.

*Mr. Phen.* Mr. *Barnet* has said, upon comparing the Books, he found

more Stock in Mr. *Barnet*'s Name, than he was charged with to the Court. I desire he may be asked, if he found more Stock than the Money the Effects he was charged with to the Court?

*Mr. J. Bernet.* No, my Lords, the best Calculation I could make was, that there was near 4 or 5000*l.* deficient.

*Mr. Serjt. Peng.* We shall leave this Article, with this Objection, that Mr. *Barnet* did inform, and a Debate to the Statutes of the Court, of which we have given full Evidence; and that Mr. *Tynslow* was admitted into that Office by the Earl himself, without procuring a Debenture to the Statutes of the Court, or Security for such Debts: If that does, it lies upon the noble Lord to prove it.

*Mr. Goffrey.* My Lords, the Common Law made good that Part their Impachment, by which the Earl of *Macclesfield* should have procured many great and advantageous Statutes of Money, for the Relief of several of the Masters of the Court of Chancery into their private Offices: We shall now proceed, my Lords, to support the several Statutes Articles, which contain many ancient Precedents, as, that by the Earl, to advance and enforce the illegal Cause, willing to himself in the Sale and Disposal of those Employments.

The Eleventh Article charges him, my Lords, with admitting Persons to those Offices, who, at the Time of their Admission, were found Substantive and Able, and highly unfit for so great a Trust, as the nature of those Employments at that Time was to be placed in them.

The Masters in Chancery, my Lords, here of late Years, been the Trustees of that Court; the Replacers of the Money and the Effects brought into the Court; brought there, my Lords, not by the choice of the Parties concerned, but by the compulsion of the Court, and the Faith of a better Security: But so, my Lords, has it fallen out, that this pretended Security, has served only to delude the Sufferers of the Court into a false Quiet, whilst their Estates have been made a prey to infamous *Sub-judices*, and wastefully applied, by some of them, to support the extravagance of their living.

The Twentieth, my Lords, of *Orphan and Lunatick* law, from the Commission of our Government, a part of the Laws of the Court of Chancery, and have been lodged in the Hands of the Masters, in a Place of Security, till the Owners should become capable of managing their Estates themselves.

When they came, my Lords, to require their Estates, he, who was the Supreme Judge in a Court established for their Relief; He, who was the Great Guardian of Infants and Lunatics, will be found to have sold his advantage to be taken of his weakness of the Orphan, and the misery of the Orphan, to render their *Indiscreet* a means of their Ruin, instead of their Relief.

Thus, my Lords, is the nature of the Trust reposed in the Masters of the Court of Chancery, and thus the Office have been permitted to make of it. The Grants of the Trust will show your Lordships, what Precarious a Lord Chancellor ought to have taken, as to the Officers admitted into these Employments, and the Abuse of this Trust, will demonstrate how little *his care* has been, while Duty it was to provide Persons of Integrity, and responsible Men, for the execution of those Offices; but who, my Lords, unfortunately for the Statute, and to the dishonour of the publick Justice of the Kingdom, professed seven Years in the Court of Chancery, in which Time, a *delinquency* of about *fourteen thousand Pounds*, has happened upon the Masters he admitted; and, when perhaps may be worthy of your Lordships particular Notice, of the Masters upon whom there appears to be a Deficiency, Fear of them were admitted by him.

If my Evidence, my Lords, as to this Article, relied only on the Proof of their Deficiency, it would, we appeared, be sufficient to evince what the Common have here alleged. The Persons of small Substance and Ability, have, by the Earl at the Bar, been preferred to be Masters of the Court of Chancery. But, my Lords, to bring this Charge still nearer to the Earl, we have it in Proof, and strongly for that title or an enquiry was met made by him, into the Character and Circumstances of the Men admitted into these Offices. That in fact, my Lords, they were Men of very mean Fortunes. No Security ever required of them; which Bill made it the more necessary, that their own Ability should be thoroughly tested and well ascertained. We shall show your Lordships, That they were entrusted, some of them, with *very, very*, some of them, I think, to the amount of a *hundred thousand Pounds* in Cash and Securities: And yet, my Lords, no other Use was made of This, but to enhance the Price of the Office, when it was to be sold by any Person to the Benefit of the Earl. The Argument will, to bring up any Person to the Earl, the Earl would not, was the largest of the State to be transferred to the Purchaser. The Temptation, possibly, excused: That *his* your Lordships will easily think so, and when the *Prior* was then served upon, no other Qualification was required, but the *Prior* was not right in the Earl's Opinion, and was thought proper to be delivered to him.—Were it only that, my Lords, the Cause would not have troubled your Lordships with this article.—but to be delivered to him in the Administration and Execution of Justice, and to be entrusted with the Estates of whole Families, whose sole support, perhaps, depended on the Ability and Integrity of these Men: How well, as *his* the Earl confided in the appointment of these Officers, the *House* of that publick Justice they were to give him in. What regard he had for the Interest of Those, whose Estates he thus threw into their Hands the Evidence we shall produce to your Lordships, and your own Observations upon it, will abundantly show, notwithstanding his flat denial of this Part of the Charge.

I will trouble your Lordships but with one Particular more in this Article and it is what the Article concludes with. A remarkable Declaration by the Earl, of the Ability, and other Qualifications of the Masters, particularly their promises by him, and that happened, my Lords, upon as remarkable an Occasion. A very remarkable Person, then a Judge who in the Court, and now judge at the Head of it, having been with Lordship, the *House* of that was making of the Effects of the Statute, out of compassion to them, and from a Zeal for Justice, endeavour'd to put some stop to it, in an Instance that came within his Cognizance. An Order was made by him, my Lords, on once the Masters, to allow some Profit to a Tutor arising from her and her Moors, which the Master designed, as it was thought, to have sunk this on a Use. The Master thought himself aggrieved, and did for Redress to his Par-















another, I can't remember I have often had the Honour to hear his Lordship mentioning the Methods which he thought of to prevent it, and to propose such Methods as I thought of; but I can't tell all the particular Times.

Mr. Serj. Popham. I desire he may be asked, whether, from the Conversation which passed between the Earl of Macclesfield and himself, it appeared to him, that the Earl had any Suspicion of a Want of Sincerity in the Masters?

Mr. Lightfoot. My Lord, when I mention'd it, I seem'd unwilling to think so. He said he hoped not; he hoped there was no manner of Danger, they were all recommended to him for Men of Honour, &c. so that Effect. Lastly, this last Year, when my Lord was talking of this Matter, he seem'd to think there was a Necessity that there should be an enquiry into this Affair; and when the Masters were ordered to bring in their own Accounts, I remember I told my Lord I question'd if they were able to do so. My Lord said he hoped so, and with'd it.

2. of *Allegiance*. If Mr. Lightfoot be left in his own Discretion, to relate without Interruption whatever he can recollect that passed between him and Lord Macclesfield before January, 1733, when this Declaration was made in Court, it may give your Lordships a fuller Light and Satisfaction.

Mr. Lightfoot. I don't remember to have had any particular Conversation about the Abilities of the Masters, farther than I have mentioned to your Lordships. I have told you that I did give some Hints in a doubtful Manner, that I was dissatisfied; but it would very ill have become me to have mentioned particular People whom I was doubtful of.

Mr. Serj. Popham. My Lords, we proceed now to examine some Witnesses upon the Article relating to the Masters coming in, and in what manner the Money was paid upon their Admissions, either on a Surrender, or Death of a former Master; and out of what Fund that Money was paid. We beg leave to call Mr. Kyngdon.

[Mr. Kyngdon called.]

Mr. Serj. Popham. We beg leave he may be asked, in relation to his Testimony with Mr. Rogers, when he came into his Office; and in what Manner the Money paid for the Office was raised?

Mr. Kyngdon. It was in *May*, 1731.

Mr. Com. Serj. Before Mr. Kyngdon answers to this, we hope the Managers shall intimate to your Lordships, that they have Evidence to apply this to the Lord who now stands accused; or otherwise a bare Discrepancy between Mr. Rogers and Mr. Kyngdon cannot affect the Earl of Macclesfield. Mr. Kyngdon. I apprehend this Interruption is very unnecessary: It is in the fifth part of the Article we are going to prove, that it was a Practice among the Masters in Chancery, to pay the Money for their Places out of the Suits Money; and that though the Chancellor had good reason to suspect or know that, yet he applied no Remedy or Redress, but let it go on for his own Benefit: I therefore must begin with the first part of the Article. They are not to examine and ask the Managers, whether they have any Proof of the latter part of the Article? We are beginning with the first part of the Article, and then shall bring it home to the noble Lord.

Mr. Sol. Gen. We shall prove the whole, that there was such a Practice, and that it is reasonable to think the noble Lord knew it, or had reason to suspect it, and did not prevent it. We must first begin with the Practice.

Mr. Serj. Popham. My Lords, we desire he may give your Lordships an Account of the Methods taken at the time he came into the Office, of selling and paying for those Offices, and in what Manner the Agreement for his Office was transacted?

Mr. Kyngdon. My Lords, I did understand the Earl, and had heard before, that the Method was, that they returned to much of the Money belonging to the Office for their places, and that such had been the practice. I did agree with him, and entered into Articles to pay him 6000*l.* for his Place. I went for some time into the Country, and when I was there, he wrote to me, and told me that he designed to resign the place on the 9th of August. I did come up to Town, and on the 9th of August I gave him a Bond for 6000*l.* Then I went with him to my Lord Macclesfield, and sent four in *March*. There was a general Order for him to deliver over the Effects and Securities to me; after this he delivered up the Bond which I had given him, and retain'd in much Money belonging to the Suits of the Court, as was sent to be sold. He paid me nine Pounds, and delivered me up my Bond, and I gave him a Receipt for 6000*l.*

Mr. Serj. Popham. I desire to know what was paid for his Admission?

Mr. Kyngdon. 1500 Guineas were paid to Mr. Cuninghame by Mr. Solj.

Mr. Serj. Popham. How was it repaid?

Mr. Kyngdon. In February afterwards, I stated an Account with the Person that was my Cash-keeper and kept my Money, in relation to the Money receiv'd and paid, and he charg'd me with the 1500*l.* and delivered it out of the Money of the Suits which he had receiv'd.

Mr. Serj. Popham. I desire he may be asked, how much Cash, what Sum of Money, came to his Hands from Mr. Rogers?

Mr. Kyngdon. Something above 20,000*l.*

Mr. Serj. Popham. I desire he may be asked, Whether, when these Effects were by the Order of Transfer delivered from Mr. Rogers to him, there was any Person present on behalf of my Lord Macclesfield, to see them delivered over?—Mr. Kyngdon. No.

Mr. Serj. Popham. Was there any Account delivered of him afterwards, either by my Lord Chancellor, or by any of the Masters of the Effects or Cash?—Mr. Kyngdon. I don't remember there ever was.

Mr. Serj. Popham. I beg leave to ask, whether at that Time he had Money enough of his own to pay Mr. Rogers 6000*l.* for his Place, and 1500 Guineas to my Lord Macclesfield for his Admission?

Mr. Kyngdon. Yes, I believe I had more Money at that time, but it was out upon Security; I was worth more.

Mr. Serj. Popham. What was his Inducement to come into this Office?

Mr. Sol. Gen. O*u*, I would ask it in other Words, Whether the estimate of his paying for his Place was not one Thing that inclin'd him to purchase?

Mr. Kyngdon. Yes, I believe it was one Inducement to me to purchase the Place,

Sir *Wm. Strickland*. I beg leave to ask another Question: Mr. Kyngdon says, he had more Money of his own at that Time; but I desire to know whether he could have paid 7575*l.* which he gave for his Office, unless he had paid it out of the Suits Money?

Mr. Kyngdon. No, I could not have paid the whole.

Mr. Serj. Popham. If the Gentlemen have done, I desire he may be asked, what Money he had of his own at that Time, either in Cash, or in his Banker's Hands, or in Security?

Mr. Kyngdon. I really cannot tell, I believe I might have between 2 and 3000*l.*

Mr. Serj. Popham. How much can you take upon you to say you had?

Mr. Kyngdon. Really I cannot tell.

Mr. Serj. Popham. Speak to the matter you can.

Mr. Kyngdon. I believe I had about 2000*l.* very near there, in Money and Effects.

Mr. Serj. Popham. What other Estate had you? Had you any real Estate?

Mr. Kyngdon. I had an Estate settled upon me at my Marriage; no other Estate.

Mr. Serj. Popham. I desire you to give an Account, whether you had any other personal Estate?

Mr. Kyngdon. No, I do not remember that, except you reckon Timber &c.

Mr. Com. Serj. I desire, my Lords, he may be asked, what the annual value of his real Estate was?

Mr. Serj. Popham. I desire, whether he be obliged to tell his whole Circumstances?

Mr. Kyngdon. I am very willing to tell, it was about 4000*l.* a Year.

Mr. Com. Serj. Whether he had not his Estate without Impeachment of Waste?—Mr. Kyngdon. Yes.

Mr. Serj. Popham. Of what Value might the Timber be?

Mr. Kyngdon. I was once bid 2000*l.* for it, but now they know I have an Occasion to sell, they will not give me so much.

Mr. Serj. Popham. I beg leave he may be asked, whether at that Time his Father was living?

Mr. Kyngdon. Yes, he was at the Time of my purchasing the Place.

Mr. Serj. Popham. As the Cash was above 20,000*l.* of what Value were the Securities?

Mr. Kyngdon. Really I cannot tell, I have given in an Account of the Effects.

Mr. Serj. Popham. About what Sum?

Mr. Kyngdon. I have given in it in my Account what it was.

Mr. Serj. Popham. To what Sum doth the whole both in Cash and Securities amount?

Mr. Kyngdon. I believe above 20,000*l.* about 40,000*l.*

Mr. Serj. Popham. The Securities as well as the Cash?

Mr. Kyngdon. I mean the Securities and the Cash together.

Mr. Serj. Popham. Upon this Evidence, we submit it to your Lordships, Whether the Timber upon his Estate was a proper Security for 20,000*l.* to be put into his Hands.

2. of *Adm*. He now represents his Estate to be 4000*l.* a Year. How was it repaid?—Mr. Kyngdon. I believe about 2000*l.* per Annum.

Mr. Pleaver. I desire to ask him, Whether, if he had sold every stick of Timber on his Estate, that and his personal Estate would have paid what he was to give for his Master's Place?

Mr. Kyngdon. No, it would not.

Mr. Serj. Popham. My Lords, We make Use of this as a Proof of the former Article.

[Mr. Thomas Basset called.]

Mr. Serj. Popham. My Lords, We desire he may be asked in what manner the Transfer of his Office was transacted, and how the Money was paid for his Master's Place?

Mr. Basset. My Lords, when I treated with Mr. *Hand* about the Surrender of his Office, one of the first Things he told me was, that I need take no Money to come into this Office, for whatever Money we agreed for, should be debited out of the Money to be paid over to me, which I understood to be the Money belonging to the Suits of the Court.

Mr. Serj. Popham. What was done in pursuance of this?

Mr. Basset. This encouraged me to go on and proceed, in order to come into that Office; I supposed this to be the Practice, else I had not gone in.

Mr. Serj. Popham. Whether was that generally repaid to be the Practice?

Mr. Basset. I own I thought so. I was a younger Brother, and had not money enough of my own to come into that Office.

Mr. Serj. Popham. We beg leave that he may inform your Lordships how much he was to pay, and how it was raised and paid?

Mr. Basset. The sum I agreed to pay Mr. *Hand* was 1500*l.* and the Sum to my Lord Chancellor was 1500 Guineas, which is 1075*l.*

Mr. Serj. Popham. We hope that he shall inform your Lordships how it was raised and paid.

Mr. Basset. As to the 1500 Guineas, I acquiesced your Lordships I was one of my Brother, and the next Day returned it him again out of the Money I receiv'd of Mr. *Hand*. As soon as I was admitted, I went to Mr. *Hand*, and demand'd of him the Suits Effects. He paid me 1500*l.* and told me I must give a Receipt for 1500*l.* I told him, it was hard to have so much Money paid me, when he told me there was much more Cash in the Office, and that I had given my Lord Macclesfield more than he had offered to pay me: He said he should pay me more afterwards, but he insisted on my taking this now, so I took the 1500*l.* and gave him a Receipt for 1500*l.*

Mr. Serj. Popham. I desire he may be asked, whether upon any Occasion he had any Discrepancy with the Earl of *Alford* relating to the method of his coming in, or about the payment of the 1500 Guineas he paid him?

Mr. Basset. In order to give an account of this, I must acquaint your Lordships of the Occasion of my wanting on my Lordships. Mr. *Hand* told me, that my Lord Chancellor had sent to him, and desired that he and my Brother, *John Basset*, would endeavour to accommodate matters between Mr. *Hand* and myself, on Occasion of the Deficiency of my Accounts.

Mr. Basset. He did not come to go; but my Brother did go to Mr. *Hand*. He would do nothing, no Accommodation could be made, but my Brother told me that my Lord Chancellor would pay back to me the 1500 Guineas which he had receiv'd, so the matter with Mr. *Hand* might be accommodated.

Mr. Serj.



Mr. Serj. Peng. When was this?  
Mr. Tho. Bennet. It was about the Time of our giving in our Account.  
Mr. Serj. Peng. Was it before Christmas, or after?  
Mr. Tho. Bennet. It was before Christmas last, in December, I think about the 7th of December. Upon that I asked my Brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1500 Guineas?  
And he said, Yes, he had it from his Lordship, and he did assure me I might depend upon it; but he did nothing could be done with Mr. Hume's. Then I desired them to acquaint my Lord with it; they both declined it, and desired I would go myself upon this Occasion. I went, and I told my Lord, I was come to wait upon his Lordship to thank him for the kind Offer he had made to my Brother, of returning the 1500 Guineas, and I wished the same could be paid of Mr. Hume's, and I could prevail with him; but nothing could be done: I came to return his Lordship thanks; and I thought I should have received the Money. My Lord asked me to sit down, and then told me if he had known I had been to give to great a Sum of Money for the Office, he would not have assured me. I told him I did give to great a Sum, but immediately, as soon as I was admitted, I asked my Lord the Value of 3000*l.* which he told me 400*l.* so that I had paid, no harm would have come to the Sumers. My Lord said, it was very generously done. Soon after that, he said, he was very sorry to see the Sum that were put into my Account and Mr. Hume's, in relation to some in the Hands of an honorable Person, for, says he, that hath deflected out the Method of purchasing these Offices, that the Money is deflected out of the Sumers Money, which, said he, I have always taken pains to do, whenever I have been asked the Question.  
Mr. Serj. Peng. We beg leave now to ask him, how much the whole of the Cash, and Securities transferred from Mr. Hume's to him, amounted to?  
Mr. Tho. Bennet. I believe near 100,000*l.*  
Mr. Serj. Peng. I apprehend he said before, he was a younger Brother, and had little Fortune of his own; I desire he may be asked, whether any Care was taken by my Lord Mansfield as to the transferring the Effects of the Sumers in Mr. Hume's Hands over to him? and whether any Person was employed by my Lord to go for the Effects transferred over?  
Mr. Tho. Bennet. No.  
Mr. Serj. Peng. Whether there was any other Security for this great Sum of Money deposited in his Hands, besides what was made by this Indenture on his Life?  
Mr. Tho. Bennet. No, my Lords, I know of no other Security. That was a voluntary Act of my own, and I paid for it.  
Mr. Serj. Peng. My Lords, Mr. Bennet says, he had some reason to hope that the 1500 Guineas would be given him back again; I desire he may be asked, whether there was any subsequent Overture about paying the 1500 Guineas back again?  
Mr. Tho. Bennet. My Lord Chancellor dismissed me at that Time, and told me, I should not know by what means, or by what means I should receive the Money, or by whose Hands; but his Lordship would take Care that when I should receive it, he would not fly from me, because I might be called upon to answer what Discourse passed between his Lordship and me in another place.  
Mr. Serj. Peng. Was there any thing done upon that?  
Mr. Tho. Bennet. Hearing nothing from my Lord Chancellor for a Fortnight after, I went to his Secretary, Mr. Dixon, and told him that I had sent each Express in my Account, that if the Money was not produced, it would oblige me to name my Lord Chancellor; and I desired him to acquaint my Lord that I could not pay this Money, and that I must discover it in a day or two. This was Sunday Night: The next Night Mr. Dixon came, and told me, that if my Lord Mansfield would be present the next Morning at the Payment of the Money at Mr. Hume's Chambers, that Mr. Hume and myself should receive it. We were there the next Day. Mr. Dixon came, but brought no Money; said my Lord expected five Indemnifications. We said, as to an Indemnification we could give none. He said he would go to my Lord. I was in hopes he would have brought the Money; but when he came back, he said it was an Holiday, and an Holiday could be had, and desired we would go to the Judges, and desire two or three days time to produce this Money. I told him we could not do so, for that very Night the Report was to be laid before the King and Council. He then returned again to my Lord Chancellor, as he said, and when he came back, he said my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am informed.  
Mr. Serj. Peng. We desire he may be asked this Question, whether it was explained what that Indemnification was, which was expected, and in what manner it was to be?  
Mr. Tho. Bennet. My Lords, Mr. Dixon explained it thus—  
E. of Alce. I hope whatever Mr. Dixon said, shall not affect me; but that they will produce him: He is able to speak for himself.  
Mr. Serj. Peng. Then I only desire he may be asked, what Officer Mr. Dixon was under my Lord Chancellor?  
Mr. Tho. Bennet. Mr. Dixon was my Lord's Secretary.  
Mr. Serj. Peng. Whether at that Time that you had the Discourse with my Lord Mansfield, you mentioned or said any thing of Mr. Dixon's having come to you in my Lord Mansfield's name?  
Mr. Tho. Bennet. No, my Lords, that was before Mr. Dixon's coming to me.  
Mr. Serj. Peng. Did you take Notice at any time to my Lord Mansfield of Mr. Dixon's coming to you?  
Mr. Tho. Bennet. No, I never spoke to my Lord Chancellor afterwards. This was the 7th of December, and it was the 7th of December that I put up upon my Lord.  
Mr. Serj. Peng. We think it appears that Mr. Dixon was an Agent of my Lord Mansfield: I desire to know what the Nature of the Proposal of Indemnification was, that he made?  
E. of Alce. I can't think Mr. Bennet is in earnest. Have they proved that he was employed by me? I have heard no Proof of it, only Mr. Serj. Peng. hath said so. Mr. Dixon himself is the proper Person to give an Account of what he told them from me. If they do insist upon it, I must leave your Lordships Judgment.

Mr. Serj. Peng. If it is insisted upon by the noble Lord, to disavow the Proceedings of his own Agent, we will waive it.  
E. of Alce. I must answer not disavow, but I object to the Evidence of this Gentleman about the Discourse of what Mr. Dixon said, who is living and can speak for himself.  
Mr. Serj. Peng. If the noble Lord will ask him any Thing, he may; we have done.  
E. of Alce. I beg Leave that Mr. Bennet may be asked two or three Questions: He has heard given Evidence which greatly surprises me in the first Place, I desire he may inform your Lordships, whether, when he was with me, he did not tell me, that if Mr. Hume's would pay 2000*l.* he would make good the whole Money?  
Mr. Tho. Bennet. No, I did not say so; I could not make good the whole Money, or any thing like it. I said that such a Report had been spread, that I suspected, that if Mr. Hume's would pay me 2000*l.* I would answer the rest; but I was not able.  
E. of Alce. I would be glad to know how he came to tell me of a Report of his own self: Was it a Report without any Foundation?  
Mr. Tho. Bennet. I went to Mr. Hume's, and said him I wanted 2000*l.* but he said if 2000*l.* would do, he believed he could lend me that. I said, I would if I gave me 2000*l.* it is something. And that was the Foundation of this Report.  
E. of Alce. I cannot give Evidence myself to disprove him in this; and therefore I desire to know whether he has said to any other Persons, that if Mr. Hume's would pay him two thousand, or three thousand Pounds, or thereabouts, he would pay the rest?  
Mr. Tho. Bennet. I might say, I would endeavour to raise the rest; but I never said I would pay the whole, for I knew I was not able.  
E. of Alce. Mr. Bennet understands my Question, to which he hath given no Answer. My Question is, Whether he hath not told some other People, that in Case Mr. Hume's would pay 2 or 3000*l.* he would pay all the rest?  
Mr. Tho. Bennet. No, my Lords, I never told any Body that I would pay the rest; but I believe I might say, if Mr. Hume's would give me 2 or 3000*l.* I would stand the Hazard, for I did not expect that all the Money should be taken out of my Hand.  
E. of Alce. I desire he may be asked, whether at that time he was with me, I did not ask him, what was his Confidence and Security he could lay a Place, when he had not Money to pay for it? or whether it was not in Answer to that, that he told me that he had infused his Life?  
Mr. Tho. Bennet. My Lord did say so to me. I answered I had no Money; that I had not bought the Place, had it not been for the Cash of the Sumers; and that I had since infused 3000*l.* on my Life, in order to secure the Sumers.  
E. of Alce. I desire to know what visible Estate the Gentleman then had, and of what yearly Value?  
Mr. Tho. Bennet. My Lords, when I came into the Office, I believe I had about 2000*l.* a Year, or thereabouts.  
E. of Alce. I desire to know, whether he was married before?  
Mr. Tho. Bennet. I was.  
E. of Alce. What Fortune had you with your Wife?  
Mr. Tho. Bennet. The Fortune I had with my Wife, was in the Whole between 2 and 3000*l.* Part of it was an House.  
E. of Alce. What was the Value of that House?  
Mr. Tho. Bennet. I had not let it then; but before my coming into the Office I have let it for 600*l.* a Year.  
E. of Alce. I desire to know if he did not keep his Coach and Equipage at that Time?  
Mr. Tho. Bennet. I did fix up my Coach the unfortunate Year 1720. I was once worth 20,000*l.* but lost it all, and became much indebted; the Estate I had of my own was mortgaged for more than it was worth.  
E. of Alce. Whether he was married in the Year, 1720?  
Mr. Tho. Bennet. No, I was not.  
E. of Alce. I desire to know what Estate he hath given into the Court of Chancery?  
Mr. Tho. Bennet. That Account lies upon the Table.  
E. of Alce. What yearly Value is that?  
Mr. Tho. Bennet. About 400*l.* per Annum, part of it is secured, the rest mortgaged, and an Annuity charged on it more than it is worth.  
E. of Alce. Has any Estate been purchased with your Money, or Money which came from you, since you was a Master?  
Mr. Tho. Bennet. Part of that given in was fix, 18*l.* per Annum, and 40*l.* per Annum.  
E. of Alce. Has any other Estate been purchased with your Money, or Money which came from you, since you was a Master?  
Mr. Tho. Bennet. None, but what I have given in every Shilling.  
Mr. Serj. Peng. My Lords, I desire he may be asked, whether he was not, at the Time of his becoming Master in Chancery, in Possession of the Office of Clerk of the Custodes?  
Mr. Tho. Bennet. Yes, I was.  
Mr. Serj. Peng. Now, my Lords, it will be very proper to ask him what that was sold for, that the Value of his Estate may be known.  
Mr. Tho. Bennet. That may affect me and my Successor.  
Mr. Serj. Peng. I don't know whether we need put you in mind, that the late Act of Parliament only authorizes the Masters, but there is none to indemnify the Clerk of the Custodes.  
Mr. Serj. Peng. Which way it will affect Mr. Bennet I don't know. I apprehend an Action can be brought for the Money he received, on any criminal Negligence or Information. But that I may not mislead your Lordships there, I desire Mr. Bennet may inform your Lordships of the yearly Value of the Office.  
Mr. Tho. Bennet. It is about 250*l.* a Year.  
E. of Alce. A Patent for Life?  
Mr. Tho. Bennet. Yes, my Lords.  
Mr. Serj. Peng. How much hath it been sold for?  
Mr. Tho. Bennet. I can't tell what it hath been sold for. It may have been once sold for about 1200*l.*

Mr. Serj.



**Mr. S.** At two o'clock, you particularly, what might it be?

[illegible]

Mr. Gam. Sir, I have another ingredient in your Lunatic Recipe & I think it will do no injury to him to introduce much he hath known it no he felt it, without observing its when.

Mr. *Pharisee*. No, I do not. It is to be understood that Queshan, because if he had felt it was his, that might be the greatest sum that he had known to be given to me, and that I will request him to. *Pharisee*.

E. to Mr. A. I have it, but know it to be fold for 1200 l. I desire he may be asked, Whether he hath not known that it hath been fold for more?  
Mr. T. B. says, I have it hath been fold for more.  
E. to Mr. A. And how much more?

Mr. Wm. T. Question is an indirect way to come at that Question that we demand them to clarify.

Mr. Lutz: It has reached your Lordships' Refidation of Yesterday will be asked. We took it then, that the Witness was not obliged to discuss when he told the Office for. Now there are asking what is the

19. Q. Now, I have in Office add for? Then the next Question may be, To whom was the Office sold, and by whom was it sold? Therefore we will humbly submit it to your Lordships, that it is not a Question to be asked.

My Lord, I apprehend this Question is proper, and that it is necessary.

E. of Ada. The R. 10 is not yet made; something has been laid by

Mr. S. J. Pridgen, The Managers for the House of Commons have been pleased to examine into the Circumstances of Mr. Bonnet, at the time he

was admitted Master, in order to shew that he was then not of Substance fit to be intrusted with so great a Sum of Money. We are then in Duty obliged to examine him as to that Substance, and the Value of his Effects. He hath told your Lordships what Estate he hath in Land; we are now to examine him as to his personal Estate: He hath told us he had a

Officer, the Clerk of the Culbroses; that he hath parted with it; the Money arising by that Office, must be reckoned as part of his personal Estate. To come at the Value of the Office, we do not ask him any Question that makes him liable to a Penalty, but such a Question, where the Answer to it may be given with Oaths; and that is, *What*

the greatest Son he hath known to have been given for the Office of the Clerk of the Cathedra? He may answer this without involving himself in any Difficulties, for it is not asked what he himself hath told the Office for! No Answer to this general Question can affect him with

Dr. Sejer, I humbly apprehend this is no way irregular. We are inquiring about his Effects: it is owed he had the Office of Clerk of the Castles, the where that it all be a Part of his personal Estate: The Answer to our Question isn't any way invade him in Danger, or subvert

Mr. Bailey. We agree that where he made false & himself to a false

there is no forcing him to answer; no Person is found to accuse himself. But this is only an *art* of literary what the Value of this Office is; the Answer cannot affect him; and therefore we hope we shall have an Answer.

Mr. Secretary. My Lords, I am furnished to hear it said that this is not

Question material for the Noble Earl's Detester: Surely it is material for us to warn of his Efface, as it is for them to derisive it. They have already exposed it into particulars, so show what small Substance he was of, and what the Efface he had was monied for: the proper Answer to be used to the

Existence as the "way" is equally material; and as they have examined it on behalf of the Community, we are entitled to examine it likewise.

F. of *After*. I apprehend the Old Man is, That he is not to be asked a Question, which if he answers he will charge himself with a Crime or Penalty. What our Answer he makes to this Question cannot charge him: Let him answer and say that he hath known this place fold for 1000.

It was then asked, What he had received for his Place? and if he had

answered and said what he had received, it would have been a *Compt*, which would have converted him: But if the Answer be, *I sold it*, it was sold for such a Price, and that is given as Evidence, to the Answer it both not appear that he sold it: Therefore upon that I have

Mr. Sen. Pro. This is by a Side-ward to know your Loyalty to  
union upon the 9th Article.

Mr. May, Præ. My Lords, we apprehend the Objection against the Managers, and therefore the Reply belongs to them. The Managers made the Objection, therefore we have leave to address, that they

Whither the Office of the Clerk of the Custodes be takable by Law, so? If he is obliged to answer this Question, it is upon a supposition that the Transaction is lawful: Therefore, in an office of this Nature, there can be no such thing as a Question, whether the fact be

Mr. LUTW. My Lords, I must beg leave to mention this to your Lordships.

asked, and what it doth mean, it can be only to cede your Lordship Resolution yesterday, and to make that of no Effect. My Lords, there should be always the greatest Candour used before your Lordships, that no Tricks or Methods should be made use of to ask that which they

not be asked. Now, my Lords, what is the Question they are examining to, and the Use to be made of it? Here is a Person that is almighty to be of mean Ability, and the Question is, What Assistance and Effort he hath? And they would reckon into part of his Estate an Office not saleable by Law, and ask him, what that Office is worth? From whom

Mr. Larn. What date that tend to? The Question is, What Evidence that Garrison had that could enable him to purchase Adams for the

the Government as that could make him go to pay his duty for this office? They have examined him about his own Estate, and his Wife's Estate, but that there is another part of his Estate, which was this Office of Clerk of the Custodies. What is that? It is that very Thing which we say it is unlawful to sell: Therefore we submit it to your Lordships, whether you will be content to give him the Office, or no.

[Ordered to withdraw; which was accordingly done; and a

The Lord Chief Justice *King* declared to them, That it was the Order and Judgment of the Lords, That the said Question was not to be asked of *Mr. Parn*. I would ask *Mr. Tho. Bouverie* one Question, Whether any Thing he had in the Month of the Time of his Banishment, or when he

Mr. *Thos. Brown*. All I had in the World was not worth it.

*Lord.* No, No.

*Mr. Pless.* My Lords, I beg Leave to ask this Question, and I hope it will be very proper, that is, I desire to ask Mr. Brown, as he had given an account of a Conversation with my Lord *Macclesfield*, I desire

My Lord *Alcockfield*, at the time of his Admission into his Office did not know what he was worth!

Mr. T. Brent. Not that I know of. I don't know that my Lord Chancellor had any Notice of it.

then are as clearly, and as fully proved and substantiated as it is possible. It comes out now, upon the Examination, that tho' several Masters were traffick'd with 40, 50, or 80,000*l*. they were not of any competent Substance, nor really worth what they paid for their particular Places. As to the manner of these sales, for these Places, I have

Evidence that his Lordship knew it, yet the practice and necessity of the Fact been proved, and that it was thus generally understood, is a reasonable Evidence in itself, and by the notice the Earl took of it himself. The several Questions he hath asked, we think it is yet clearer. But

[Then the Managers and the Counsel were divided in a 3d row  
and the Court retired to the 4th.]

Saturday, May 31. St. Paul, Minn.

THE Lords being seated in their House, Proclamation was made by the Sergeant at Arms for Silence; and another Proclamation, That all Persons concerned were to take Notice, that *Thomas Earl of Mordaunt* now stood upon his Trial, and they might come forth in order to give

Lord Chief Just. Kay. Gentlemen of the House of Commons, you may proceed in your Evidence,

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which did mention this Commission to *five of the Masters*; they were to be sworn approving of it, that *Mr. Edwards* assigned the Lord Chancellor, that it was the Opinion of one of them, that a *Letter Commission* was to be made. Another of the Masters was so far from agreeing to this method of doing, that he proposed a *Commission of Bankruptcy* as the only means to bring that matter to a proper Light. *My Lords*, was what his Lordship was most afraid of. That would have *discovered the Deficiency* of this Office, which would have brought a *Disgrace* upon others, and consequently have *lowered their Price*. This was his Lordship's only Care, whilst for the rest he could sit unmoved, and see to great a Sum of the Sumers money going away in nothing, as it passed through the Hands successively of three Bankrupts. *My Lords*, we shall further prove, that when his Lordship ordered a *Petition* to be preferred to himself, that he might approve of this Commission, he never ordered the *Salary* to be acquitted with it, nor did they any Notice of it. Nor did his Lordship say, if *Wijay* had conspired with any other Conditions, so far much as appears if he had sworn to his Circumstances.

It will be made appear, that at this very Time *Mr. Edwards* was impatient, and did deliver, that *Peader's* Circumstances were very bad, and that neither he nor any one else attended the Commission of Bankruptcy against *Peader* on Behalf of the Sumers.

And, *My Lords*, to judge a little further of this matter, by a very fair Rule of Justice, that of *doing as you would be done by*, your Lordships will find, that *Mr. Edwards* assigns, that if it had been his own money, he would have looked upon it more carefully than it is.

Further yet, *My Lords*, we shall prove, that notwithstanding this Debt was compounded with *Wijay*, yet he has paid the whole Sum of other Debts, with Interest, to several of his Creditors.

Lastly, *My Lords*, his Lordship in his Answer says, that he believes *Mr. Edwards* has since got in one thousand Pounds of *Peader's* Debt. The Truth is, one thousand Pounds has been recovered; but it was by an actual Discovery of unaccounted Effects belonging to *Peader*; not one thousand Pounds of which was paid to *Mr. Edwards* by *Wijay*, as Part of *Peader's* Debt.

But does his Lordship seriously intend this for any Satisfaction of himself, any Compensation to the Sumers, that after five or six Years Expatriation, of about twenty-four thousand Pounds due to them, he believes one thousand Pounds may have been since recovered?

I cannot help offering here to your Lordships, how different a Care he appears throughout his Lordship's whole Behaviour, with regard to his private Advantage, and the Safety and Satisfaction of the Sumers to the Court.

In their Case, he could think it equitable to subject their Estates to the Liable of a *Mistake in Chancery*, who had *separated and given away* their substance and his own. But in his own private Affairs, how carefully managed was his Lordship. The best Advantage was not neglected, and if a Master's Place was to be alienated, a *Disgrace* of Guilt was usually inflicted upon, instead of the Pounds which had before been specifically exorted.

But, *My Lords*, in this Impeachment, the Commons, with regard to the Dignity of their own Proceedings, with regard to this assault Judgment, are as desirous to enlarge upon matters of smaller moment. His Lordship might have enjoyed his *desired Guinea* in quiet, had not a *long* *Term* of his Conduct in so high a Station, tended to display the Reverence due to the Law, by an *Exposure* of those instruments to the Ruin of the Subject—As well against Executors and Robbers, we guard ourselves with a *Caution* proportionable to the Intensity of their Character: But when the Sanction of the Law, and the Emphasis of Authority, designed to defend and proceed us, are made use of to invade as *no* Rules, how rare and extensive must that Ruin be?

*My Lords*, The Commons have beheld with the deepest Concern such corrupt Practices in this high Court, such as have *defamed the Beauty* of justice, and rendered the Administration of it *gross*, and even *fatal* to the Subject. They have beheld that Minister of Justice, whom the Laws of his Land have invested with an extraordinary Power to punish *Fraud* and *Oppression*, himself carrying on a most *pernicious* Deceit, to the great Dishonour of the Court, and the Ruin of its Subjects. The *Guardian* of Orphans become their *Oppressor*, the Keeper of the King's Conscience profaning his office, and the Dignity of his high Station, to an ignominious Toga with the left Shoulder, and employing the Scales of Justice in the Balance of an *Officer*.

But, *My Lords*, that parliamentary Enquiry is now come, with the Power of which he forced the Masters into Compliance with his arbitrary demands. He then *avowed* it might possibly go all with him, tho' it did fare worse with them. So just a *Demon* pronounced by *Long* *Parliament*, as we said, as so *little* of being *revoked*, has reflected, that for as it regards him, it will be unanimously *imposed* by your Lordships.

*Mr. Langdale*, *My Lords*, we shall now proceed to our Evidence on the two Articles together: To shew to your Lordships that the *Deficiency* of *Peader's* Office was discovered to be concealed by many judicious Practisers: And first of all we shall call a Witness to prove *Mr. Dummer's* Delinquency to be about twenty or thirty thousand Pounds.

(*Mr. P.* is called, and appeared.) *My Lords*, we desire that *Mr. Young* may refresh his memory, as this matter was referred to him to examine; and that he would give your Lordships an Account how he found the State of *Mr. Dummer's* Office, and what Deficiency there was in it?

*Mr. Young*, *My Lords*, I find in my Report the *Debt* due from *Mr. Dummer's* Office was rated at 49,624 l. 11 s. 10 d. and I said that *Mr. Dummer*, who I accounted *Mr. Dummer* as that Office, had paid to the Sumers 25,725 l. 15 s. 9 d. so that there remains due to the Sumers of the Office, such as have paid their money into *Mr. Dummer's* Office, the Sum of 23,898 l. 16 s. 1 d. And this I believe to be a true State of the Account, from such Evidence as was laid before me.

*Mr. Lums*, If the Counsel on the other Side don't think fit to ask this Witness any Question, we beg Leave to call *Mr. Edwards*, who succeeded *Mr. Dummer*, and will give your Lordships an Account of the State of that Office, and what the Deficiency was.

(*Mr. Henry Edwards* sworn.) *Mr. Langdale*, *My Lords*, we desire that *Mr. Edwards* may be asked, how much the Deficiency is in *Mr. Dummer's* Office?

*Mr. Edwards*, *My Lords*, according to the Account given in, the Deficiency appears to be about twenty-five thousand odd hundred Pounds; but since that, there is discovered about fifteen hundred Pounds more, which was not brought into the Account. It was discovered about three Weeks or a Month ago, and not before.

*Mr. Lums*, I desire he may be asked, whether he knows of any other Deficiency discovered?

*Mr. Edwards*, *My Lords*, I do not. *Mr. Serj. Preys*, *My Lords*, I desire *Mr. Edwards* may be asked, that as there hath been a further Deficiency discovered, whether there hath not also been a Discovery of further Effects?

*Mr. Edwards*, Not as I know of. I am informed Administration hath been lately taken out to *Mr. Dummer*, that there hath been a Discovery of Effects, but to what Value I can't tell.

*Mr. Serjeant*, I would desire he may be asked, whether he hath had any Account from the Administration?

*Mr. Edwards*, I have from *Mr. Paston*, who I understand administered. He told me he had discovered some Effects, but he did not tell me to what Value.

*Mr. Lums*, If the Counsel for the noble Earl have done, we would beg Leave to ask another Question in relation to this matter: They enquire what were the other Effects of *Mr. Dummer*, we desire to know, if *Mr. Edwards* can inform us, how long ago this Discovery was?

*Mr. Edwards*, I can't exactly tell. I believe it is about two Months ago that *Mr. Paston* hath had Administration; and since that he hath made this Discovery.

*Mr. Lums*, It is proper from this Question that hath been asked by the Counsel for the noble Lord, to call another Witness to prove that there have been Effects discovered, and that there have been Goods laid by three or four Years, and since placed, he said he saw taken of his Effects.

*Mr. Serj. Preys*, *My Lords*, before this Gentleman goes, I beg Leave he may be asked one other Question, whether he had not Notice before *Chrystan* left, that there were other Effects of *Mr. Dummer*, and from whom?

*Mr. Edwards*, Yes, I believe I had; and when I understood that *Mr. Paston* was the Person who had taken out the Administration, I told him of it.

*E. of Marchmont*, *My Lords*, I desire he may be asked, who it was that brought him Notice of their Effects?

*Mr. Edwards*, It was a Gentleman that came out of the Country. I don't remember his Name. He was a Person that lived near the Place where *Mr. Dummer's* Country House was. I have forgot his Name.

*E. of Arde*, Can you recollect if you hear his Name? Was his Name *Grofflow*?

*Mr. Edwards*, I believe it was.

*E. of Arde*, I desire, if you can recollect, who he had been come from?

*Mr. Edwards*, I think he had been come from *Mr. Goringham*; I don't know that he succeeded your Lordship. I understood your Lordship had been acquainted with it, but not that he acquainted you with it.

(*Mr. Campbell* sworn.)

*Mr. Lums*, *My Lords*, I desire that this Witness may be asked, whether he knows of any Goods or Effects of *Mr. Dummer* have discovered, and at what Time, and how long they had lain so that Place where they were found?

*Mr. Campbell*, In the Year 1725, I did buy a Parcel of Hops, but who they belonged to, I did not then know; but since I find they were *Mr. Dummer's*. They were one hundred and forty-eight Bags of Hops. I sold sixteen of them the same Year, one hundred and one more. I brought them to Countrymen; some of one Man, and some of another. I brought them by Commission; but *Mr. Dummer* was not the Man that employed me, neither did I receive the Money from his Hands.

*Mr. Lums*, We desire to know how long the Goods did lie in that Place where they were; and whether there were any Loss by the Sale of those Goods, being left so long there?

*Mr. Campbell*, They had lain there about three Years, and I believe, monthly speaking, there was about five hundred Pounds Loss upon them.

*Mr. Paston*, I desire *Mr. Campbell* may be asked, how he came to know they were *Mr. Dummer's* Hops?

*Mr. Campbell*, I never did know they were *Mr. Dummer's* Hops, nor do I still know it, but as I am told.

*Mr. Paston*, *My Lords*, I desire he may be asked who told him so?

*Mr. Campbell*, This Gentleman told me so [pointing to *Mr. Paston*].

*Mr. Serj. Preys*, *My Lords*, we shall now call *Mr. Paston*, who hath taken out Administration by the Direction of the Lords Commissioners of the Great Seal; and under that Administration he hath possessed himself of those Effects which were discovered and lay waste before.

*Mr. Serj. Preys*, *My Lords*, I beg Leave this Witness may be first asked one Question: I think he hath said, that he bought those Hops by Commission, not by the Order of *Mr. Dummer*, nor for *Mr. Dummer*; I desire he may be asked, by whose Direction they were kept so long by him?

*Mr. Campbell*, He that gave me the Orders to buy them, was not *Mr. Dummer*, neither did he pay me the Money. The Reason they lay so long was, I had no Orders to sell them.

*Mr. Serj. P. O. R.* Who was the Person that gave you Orders to buy them?

*Mr. Campbell*, The Person's Name is *Mr. Langdale*.

*Mr. Serj. Preys*, Where does this Person live?

*Mr. Campbell*, He lives at *Wigton*.

*Mr. Con. Serj.*, *My Lords*, I desire this Witness may be asked, whether or no, about the Time that such Hops were bought, they were not very cheap, and at a low Price?

*Mr. Campbell*, They were at a low Price.

*Mr. Con. Serj.*, Whether a great Number of People have not kept Hops upon a Supposition that they would rise?

*Mr. Campbell*, Yes, they have a great many.







being paid for the said Henry Edwards, his Executors, Administrators, and Assigns, in the first Place, by and out of the premises, to defray and reimburse him and themselves all such losses, costs, charges and expenses in this, they, or any of them shall sustain or be put unto, by Reason of the Trust hereby in him reposed, or the Management or Execution thereof, or any other thing in anywise relating thereto: In witness whereof, the said Parties to these presents have hereunto interchangeably set their Hands and Seals the Day and Year first above-written.

*Flourished Dornier.*

*Mr. Lute.* The next thing we shall trouble your Lordship with in relation to this matter of the Composition, is a Petition of Mr. Edwards, which there is an answer. The answer is writ by Mr. Catterham, and signed by the noble Lord. I mentioned to your Lordship that no Order is given upon it: Nothing appears in publick: Therefore we must beg leave to move the Earl's Head to this Order made upon this Petition.

*E. of Macc.* After taking the Petition in his Hand, and looking upon the Name subscribed to the Answer written upon it, said, My Lords, this is my Hand.

*Clerk reads,*

To the Right Honourable Thomas Earl of Macclesfield,  
Lord High Chancellor of Great Britain,

The Humble Petition and Representation of Henry Edwards, Esq. one of the Masters of the high and honourable Court of Chancery,

Sheweth,

THAT William Wifflin, Citizen and Goldsmith of London is, and stands justly indebted to Edward Dornier, Esq. late one of the Masters of this Court upon Account, in the full Sum of twenty-four thousand and forty-six Pounds, four Shillings, as by the Books of the said William Wifflin doth and may appear.

That the said Edward Dornier is and stands justly indebted to divers Persons, Sutors in this Court, in several considerable Sums of Money. And for the more speedy getting in and recovering the said Debt, and effectual Payment of all such sum and sums of Money as are owing by the said Edward Dornier as aforesaid, the said Edward Dornier, for that End and Purpose, hath by Indenture, bearing Date the 20th of July 1722, granted, assigned, transferred, and set over to your Petitioner, his Executors, Administrators, and Assigns, the said debt or sum of twenty-four thousand and forty-six pounds, four shillings, in Trust, and to the latest and your Petitioner shall pay, apply, and dispose of the same, or such part thereof as shall from time to time be by him got in and received of and from the said William Wifflin, in such Manner as this Court shall order and direct.

That it appears to your Petitioner, that the said William Wifflin is indebted to divers other Persons in great Sums of Money, and for some time hath not been able to carry on his Business, or to make good and pay the said Debt so assigned to your Petitioner; but hath unjustly offered to your Petitioner and his other Creditors to come to a Composition, and to pay them in proportion the stand to be able. And your Petitioner, doubting whether he can with safety to himself, agree to any such Composition,

Humbly prays your Lordship would be pleased to refer to one of the Masters of this Court, to see if such Composition, so proposed by the said Wifflin, be for the Benefit of the Persons intitled to receive the same.

And your Petitioner shall ever pray, &c.

20th of June, 1722.

It is as is prayed, and it is that End let it be referred to Mr. Hicocks one of the Masters of this Court, and let the Master send his Report: After which, such further Order will be made as shall be just, of which give Notice forthwith.

Macclesfield, C.

*Mr. Lute.* My Lords, I beg leave to take Notice, that in this Petition which expressly recited, that Dornier was indebted to the Sutors of the Court, and that being so, we apprehend the justest Care should have been taken for their Benefit. Your Lordships shall see, in the Progress of this thing, how it was transacted. I believe any Person that is concerned in the Court of Chancery hath not known a Case Proceeding in the most trifling manner whatsoever. My Lords, the next thing is a second Petition, and to be with a Report annexed, but we can't find it filed; here is a Paper of Mr. Hicocks not signed nor filed, which we do apprehend to be the Report wanted, and therefore we desire that may be first read.

*Clerk reads,*

26th of July, 1722.

Whereas by an Order made by the Right Honourable the Lord High Chancellor of Great Britain, the twentieth of June last, upon the humble Petition of Henry Edwards, Esq. one of the Masters of this Court, and directed to see if the Composition the said Order mentioned, to be offered or proposed to be made by William Wifflin, Citizen and Goldsmith of London, to the said Mr. Edwards, as Assignee of Edward Dornier, Esq. late one of the Masters of this Court, who was Creditor of the said William Wifflin, for the Sum of 24,046. 4s. in the said Petition mentioned, before the Benefit of the Persons intitled to receive the same. I have been ordered by the said Mr. Edwards, and by the said William Wifflin, and considered of the several Matters by the said Petition and Order so made. And the said William Wifflin hath under his Hand in Writing proposed to assign over to the said Mr. Edwards (as a Composition for, and in full Discharge of the said Sum of 24,046. 4s.) the Sum of 10,000. part of a larger Sum due to the said William Wifflin, from Edward Pasler of Hack-

ney, in the County of Middlesex, Gent. and to pay to the said Mr. Edwards in specie the Sum of 1400. 3s. 1d. over and above the Sum of 5000. already paid to the said Mr. Dornier in part of the said Composition. And upon Consideration had of the Circumstances of the said William Wifflin, and the said several Matters, I am of Opinion that the accepting the said Composition will be for the Benefit of the Persons intitled to receive the same. All which I humbly certify and submit to his Lordship.

*Mr. Catterham.* Now read the Petition of Mr. Edwards, and the Order thereupon.

*Clerk reads,*

To the Right Honourable Thomas Earl of Macclesfield,  
Lord High Chancellor of Great Britain,

The humble Petition of Henry Edwards, Esq. one of the Masters of the high and honourable Court of Chancery,

Sheweth,

THAT upon your Petitioner's former Petition preferred to your Lordship relating to William Wifflin, Citizen and Goldsmith of London, your Lordship the 20th of June last was pleased to refer it to Mr. Hicocks, one of the Masters of this Court, to see if the Composition mentioned in the said Petition and Order to be proposed by the said Wifflin, would be for the Benefit of the Persons intitled to receive the same.

That the said Mr. Hicocks having been attended by your Petitioner and the said Wifflin, hath, pursuant to your Lordship's said Order, made his Report, dated the 26th of July last, whereby he certifies, that he is of Opinion that the accepting of the Composition, in his Report mentioned, will be for the Benefit of the Persons intitled to receive the same, as by the Report annexed.

Wherefore your Petitioner most humbly prays your Lordship to take into your Consideration the Matter of the said Report, and to order your Petitioner to accept of the said Composition upon the Terms therein mentioned, if your Lordship shall so think fit, or to make such other or further Order in the Premises as to your Lordship shall seem most meet.

And your Petitioner shall ever pray, &c.

3d of August, 1722.

On the Report annexed he it as is prayed. Of which give Notice forthwith.

Macclesfield, C.

*Mr. Lute.* My Lords, I must beg leave to make one Observation upon this, that the noble Lord may explain it, for I believe there is no precedent for it, when there is a Composition that to be made, and thus it is, and a Report hath been made, the Prayer of the Petition it, That Mr. Edwards may be ordered to accept of the Composition, or to make such other Order as his Lordship shall think fit. The Answer to it is, Be it as is prayed, of which give Notice forthwith; by which I suppose the Parties understood that it was ordering Mr. Edwards to accept of this Composition. Now it is wonderful to me, if he was ordered to accept of the Composition, why it is said, Give Notice forthwith. What! when the thing is done? Besides, there is another thing more material. To whom should such Notice be given? Surely to the Sutors of the Court. But it will know his Lordship had not appointed any Solicitor for the Sutors of the Court, and they had no Notice, 'tis there is a some manner as there of what is done in other Cases. We that beg leave to these next to your Lordships, that their Orders on Clerk Pasler, this Report, and these Proceedings, were not one of them entered or filed as Orders usually are.

*Mr. Pfen.* My Lords, I beg leave to make one Observation before this Matter goes over. The Petition is by Mr. Edwards, only, one of the Masters, and it is, that my Lord Macclesfield would be pleased to order him to accept of the Composition. None of the Sutors of the Court, who were the Persons intitled to receive the same, are Petitioners.

Clerk reads two Certificates from, and signed by Edward Goldsmith, Deputy Registrar, that there were no such Orders entered, nor no such Report filed.

*Mr. Lute.* My Lords, the Composition is signed by William Wifflin. I desire Mr. Edwards may be asked, whether he knows Mr. Wifflin's Hand?

*Mr. Edwards.* This is signed by Mr. Wifflin; it is Mr. Wifflin's Hand.

*Clerk reads,*

Whereas a Sale in Chancery is now depending between Mr. Edward Pasler of Hackney, and myself, for the Sum of 22060. 12s. 5d. which he agreed to pay me for and upon closing all Accounts between us: And whereas Edward Dornier, Esq. late a Justice in the High Court of Chancery, being indebted to divers Persons, Sutors in the said Court, in several considerable Sums of Money, for and on account of Money brought before, and paid to him as one of the Masters of the said Court, he the said Edward Dornier, for the better Payment thereof, did by Assignment, dated the 26th of July 1721, assign over to Henry Edwards, Esq. one of the Masters of the said Court, a Debt of Sum of 24,046. 4s. which was and is due and owing from me to him, the said Edward Dornier. And whereas I being incapable of paying the said Debt of 24,046. 4s. did lately propose to a Composition for, and in full Discharge of the same, so assigns to the said Henry Edwards the Sum of 10,000. part of the Sum of 22060. 12s. 5d. due to me from the said Edward Pasler, as aforesaid, and likewise to pay to him, the said Henry Edwards, the Sum of 1400. 3s. 1d. in Specie, over and above the Sum of 5000. before paid to the said Mr. Dornier, in part of the said Composition: And whereas on a Petition pre-

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fer'd to the Right Honourable the Lord High Chancellor of Great Britain, by the said Henry Edwards, representing the matter of the said Proposal, and after several subsequent Proceedings had upon the said Petition, his Lordship was pleased, by Order dated the third of August, 1722, to order the said Henry Edwards to accept of the said Composition. And the said Henry Edwards having thereupon agreed to accept of the said Composition, accordingly I do hereby, in Consideration thereof, assign over to the said Henry Edwards the Sum of ten thousand Pounds, part of the Sum of twenty-two thousand and forty Pounds, twelve Shillings and Five-pence, due to me from the said Edward Parker as aforesaid, having already paid him, the said Mr. Edwards, the other Sum of 1261. 21. 1d. before-mentioned. And I do hereby promise to pay to the said Henry Edwards, Esq. or his Order, the said Sum of ten thousand Pounds, on my receiving the Sum of twenty-two thousand and forty Pounds, twelve Shillings and Five-pence aforesaid, or otherwise to pay him a like Proportion of what I shall recover, more or less, from the said Edward Parker. And I do hereby further promise, that I will not do any Act to incumber or discharge the Demand I now have against the said Edward Parker, without the Consent of the said Henry Edwards. And whereas the said Mr. Edwards does now accept of the said Composition, I do hereby declare and agree, that if I do not on Demand pay him the before-mentioned Proportion of what I shall receive from the said Edward Parker as aforesaid, or do any ways discharge the Demand I now have against him, without the Consent of the said Henry Edwards, that then the said Composition so made by the said Edwards, shall be void, and of no effect, as if it had never been made. And I do hereby further promise, I will at my own Charge prosecute the said Suit, and also do and execute all further and other Acts that shall be necessary for the better enforcing of the said Henry Edwards, Esq. the before-mentioned Proportion of what I shall or may receive as aforesaid, from him the said Edward Parker, as he the said Henry Edwards shall at any Time require. Witness my Hand this twenty-eighth Day of August, 1722.

William Wofen.

31st of October, 1724. Paid to Henry Edwards, Esq. the Sum of one thousand Pounds, in Part of this Note of Assignment.

William Wofen.

Mr. Laro. My Lords, this Composition which hath been read to your Lordships, is recited to be in full Satisfaction and Discharge of *Wofen's* Debt. Now we beg Leave Mr. Edwards may be asked, Whether he made any Application to the Earl of Macclesfield, before the said Petition was preferred?

Mr. Edwards. My Lords, I had received Proposals from Mr. Wofen; he came to me and told me, he had a Sum of Money in his Hands, and was willing to pay the Debt to Mr. Durno, in proportion with his other Creditors, and asked me whether I would accept of a Composition, and give him a Discharge in full. I told him I had no power to make a Composition, but however, I would represent it to some of the Masters; and accordingly I spoke to Mr. Hancock, who was then Chief Master, and told him the Proposal Mr. Wofen had made, and I believe I mentioned it to others, but especially to Mr. Hancock, he being the senior Master, and more particularly concerned in Mr. Durno's Affairs. Mr. Hancock was of Opinion I could not safely make a Composition. I asked, What Method then was the most proper to be taken? If that was really all he had to say, I did better know than this how nothing. He said he did not see why it might not be in this Case as in other Cases, whether upon a Petition to my Lord Chancellor, he might not direct an Enquiry to be made by a Master, whether it was for the Benefit of the Parties to make such Composition or not? Upon that I waited upon my Lord Chancellor, and again read him with Mr. Wofen's Proposal. I told his Lordship, I thought I had not power to do it. He said, I think to see, I don't see that you have power to do it. Said I, I am informed that it is usual in Cases of this Nature, to apply to the Court by Petition, that it may be referred to a Master, to see whether the accepting of this Composition be for the Benefit of the Parties concerned or not. Yes, says my Lord, I think that is very proper, that will indemnify you, I would have you prefer a Petition, which accordingly I did.

Mr. Laro. I would beg Leave to ask in Relation to what he mentions, that it was taken Notice of that he had no power to make such Composition, whether any thing was said whether my Lord Macclesfield had such a Power?

Mr. Edw. No, there was nothing said of this.

Mr. Phos. My Lords, I desire he may be asked, Whether any of the Suitors were acquainted with this intended Composition?

Mr. Edw. No.

Mr. Sol. Gen. Did my Lord Macclesfield give any Direction to give Notice to any of the Suitors?—Mr. Edw. No.

Mr. Phos. My Lords, I desire he may be asked, if he himself attended Mr. Hancock, when Mr. Wofen was before Mr. Hancock?

Mr. Edw. I am not sure I was there at any time with Mr. Wofen.

Mr. Phos. If he knows what Methods were taken to know what Mr. Wofen was worth?

Mr. Edw. I understood that Mr. Hancock and Mr. Rogers, the two senior Masters, upon Mr. Durno's exhibiting himself, had Mr. Durno's Accounts laid before them, and that they were directed to inspect those Masters; and I was informed they did look into Durno's Books, and had also the Perusal and Inspection of Mr. Wofen's Books, to see how Mr. Durno's Affairs stood in those Books.

Mr. Phos. My Lords, I desire Mr. Edwards may be asked, if any Body was employed for the Suitors on their Behalf?

Mr. Edw. I was before Mr. Hancock, but not present with Mr. Wofen.

Mr. Phos. I ask if any Body on the Suitors Behalf was before Hancock, when Mr. Wofen was there, to see and cross-examine him?

Mr. Edw. I don't remember that was.

Mr. Sol. Gen. My Lords, I desire Mr. Edwards may be

Whether this Petition is of his own Hand-writing?

Mr. Edw. No, my Lords.

Mr. Sol. Gen. Do you know whose it is?

Mr. Edw. It is my Clerk's Hand.

Mr. Sol. Gen. Whether the two last Lines were struck out

the Answer to the Petition, and by what Hand?

Mr. Edw. I don't know when they were struck out.

Mr. Sol. Gen. My Lords, we will beg leave to mention what

At the End of the last Petition, the Master defines an Indemnity,

the Order of the Court. Part of the Petition is, that he may be

aid and saved harmless in making such Composition. But that is

out before the Answer, which shows, as I humbly apprehend, the

Notice that the Earl of Macclesfield himself took, how dangerous

was that Translation was.

Read the Words.

Chief reads. And that your Petitioner may be indemnified and

harmless in making such Composition.

Mr. Sol. Gen. Do these Words stand now in the Reading?

Chief. No, they are cut out.

Mr. Edw. I remember this was a Paper that I had before the

able Committee. I was a little surprised to see the Words struck out,

but when they were struck out I can't say, nor by whom.

Mr. Laro. I desire he may be asked, if they were struck out before

delivered the Petition into the Committee?

Mr. Edw. Yes they were.

Mr. Sol. Gen. My Lords, we desire he may be asked, how much he

had received of this Composition?

Chief reads. I desire him to explain himself, whether these Words

were struck out after the Petition delivered, and before the Order made

by the able Earl?

Mr. Edw. My Lords, I don't remember ever to have taken Notice

that these Words were struck out, till I had occasion to look for it to say

it before the Committee.

Chief reads. Whether he hath any Doubts, whether they were struck

out before they were delivered into the Committee?

Mr. Edw. They were struck out before I delivered them into the

Committee.

Mr. Sol. Gen. In whose custody was this Petition?

Mr. Edw. I believe part of the time in Mr. Hancock's; Mr. Hancock

sent it to me, and I have had it ever since.

Mr. Sol. Gen. Whether he struck out these Words that were in-

serted for his own Indemnification?

Mr. Edw. No, upon my Oath I did not.

Chief reads. As I apprehend, there was no Commission of Bank-

ruptcy against Wofen, therefore I would know what Method was taken to

inform the Court of the real Substance and Ability of Wofen before the

Composition was made?

Mr. Edw. I know of no other Application made to the Court by Mr.

Wofen.

Chief reads. Was Wofen examined upon Oath?

Mr. Edw. Mr. Hancock told me that Mr. Wofen had made an Affi-

davit, that this Sum of Money which he proposed as a Composition,

was what he was able to pay in Proportion with the rest of his Creditors,

and that he guaranteed his Report thereupon.

Mr. Laro. Was the Affidavit ever filed?

Mr. Edw. No, my Lords.

Mr. Sol. Gen. My Lords, we desire he may give an Account, how

much he hath received of this ten thousand Pounds?

Mr. Edw. The first Sum was fourteen hundred and odd Pounds

and the Sum of one thousand Pounds more.

Mr. Sol. Gen. How much of this was of the ten thousand Pounds?

Mr. Edw. Only the one thousand Pounds.

Mr. Sol. Gen. What is become of Parker?

Mr. Edw. Mr. Wofen hath told me that he is in *Holland* or *France*.

Mr. Sol. Gen. What was his Character, as to substance at the time

of his Composition?

Mr. Edw. I never met any Body that could give an Account of his

Character. All I heard of him was from Mr. Wofen himself.

Mr. Laro. My Lords, I desire he would acquaint your Lordships

when the one thousand Pounds was paid?

Mr. Edw. I can't recollect exactly the Time.

Mr. Laro. As near as you can, before or since Christmas?

Mr. Edw. I believe it was in *September* or *October* last; I believe in *October*.

Mr. Sol. Gen. I desire Mr. Edwards may inform your Lordships what

he thought of Parker at the Time of the Composition, whether he look-

ed upon him as a Man of Substance?

Mr. Edw. I could make no Judgment of the man, I never saw

him before; I know nothing of him, otherwise than as Mr. Wofen

told me.

Mr. Sol. Gen. That is no Answer to my Question, which is, what his

Opinion was as to his substance at the time of the Composition, whether

he would have trusted him with one hundred Pounds?

Mr. Edw. I can't tell what Answer to give to it, Wofen represented

him to me as a man able to pay the Debt, and from his Representations

I believed that Parker was sufficient.

Mr. Sol. Gen. Whether he enquired into Parker's Character?

Mr. Edw. There was Nobody I knew to enquire of.

Mr. Sol. Gen. Did he enquire, or did he not?

Mr. Edw. I asked Mr. Wofen as many Questions as I could, and what

his Opinion was about him. He told me he believed he was able to pay his

Debt, and he told me one *Hobbs*, a Jew, who was his bail, could give



my Substanc. I happen'd to meet *Holles* at the *Rabins Coffee-House*, and I ask'd him if he knew *Pringle*? He said Yes. Says I, Is he a man of any Substanc, a lack-be? No, says he, I believe he is in very mean Circumstances. This is all I was ask'd.

Mr. Ser. *Pringle*. What was your Opinion of this Man's Abilities?  
Mr. Edwards. My Lords, I told you that so to the answer I had of you. Mr. *Wijffe* gave me a good assurance that he was a Man of Ability.

Mr. *Pow*. I desire he may be ask'd, whether Mr. *Wijffe* hath not paid his whole Debt to several other Creditors?

Mr. Edwards. I am inform'd he hath paid his full Debt to some Creditors.

Mr. *Plummer*. My Lords, I desire he may be ask'd, what Directions he receiv'd from your Lord *Montagu* to acquire into this Man's Circumstances?

Mr. Edwards. I had no Directions.

Mr. *Plummer*. Whether any inquiry was made by the Earl of *Bedford*?

Mr. Edwards. Not as I know of.

Mr. *Laws*. I think he mentioned one *Holles* as his Bail. I desire to know, whether there was a suit commenced for this Debt assign'd?

Mr. Edwards. I understand it was for this Debt assign'd which *Wijffe* secured as Law.

Mr. Ser. *Pringle*. My Lords, I desire he may be asked, whether Mr. *Pringle* hath appear'd here and been chosen solvent, or a Person quite Free away?

Mr. Edwards. I have not seen Mr. *Pringle*, nor any that have seen him, for some considerable Time.

Mr. Ser. *Pope*. My Lords, I beg leave to make one Observation, and to give you your Lordships Time; that is, That you would be pleas'd to observe in the Preamble as upon this Article, the several Acts and Orders given by the Earl of *Montagu* relating to this Debtor's Estate of *Dunm*, as the Notice of his Deficiency, and you'll find the Earl himself doing up all which makes a Deficiency; that is, compounding a Debt due to *Wijffe* to *Dunm*, and therefore these Orders being given real before your Lordships, you will please to enter them in your memory, till we come to the 6th Article, wherein it is charged that there was a Deficiency in *Dunm*'s Office, and there we shall show that the noble Lord declared that he never knew of any Deficiency; and by an Order made in Court, pronounced by himself, he then did direct that a Matter should inquire if there was any Deficiency in this Office, for that those publick Acts need not be necessary to be read over again upon that Article, but as now produced, will be sufficient to prove the Notice the noble Earl had of this Deficiency, and that even he made Part of the Deficiency himself.

Mr. *Laws*. My Lords, we have done upon these two Articles we have read.

Mr. Ser. *Pringle*. My Lords, if the Gentlemen have done, we desire to ask some Questions; and first we beg leave that he may be ask'd, whether any of the Matters were acquainted with this Agreement or Compulsion with Mr. *Wijffe*?

Mr. Edwards. I don't remember that any were but Mr. *Hind*.

Mr. Ser. *Pringle*. My Lords, we desire he may recollect whether there was any Confession between him and any other Matter, as to the manner that this Compulsion should be made before it was alter'd, and whether it was a reasonable Compulsion or not?

Mr. Edwards. I mentioned it to two or three other Matters at the publick Office, but I can't charge my memory particularly who they were.

Mr. Ser. *Pringle*. Was that before the Time that the Compulsion was made?

Mr. Edwards. Before the Time I apply'd to my Lord *Montagu*.

Mr. Ser. *Pringle*. My Lords, I desire that Mr. Edwards may inform you Lordships from whom it was that he received the information, that several of the Creditors of *Wijffe* were paid their full Debts?

Mr. Edwards. The first Person that inform'd me was Sir *Lawrence Carter*; I happen'd to be at his Chambers, and naming to me the Affairs of *Wijffe*, he told me his Brother, Mr. *Thomas Carter*, had received 120*l*. which Mr. *Wijffe* owed him, and which was his whole Sum.

Mr. Ser. *Pringle*. I desire to know when it was that he received that sum?

Mr. Edwards. There was no Time mentioned when that was paid me: As near as I can recollect the Time, when Sir *Lawrence Carter* told me this, it was soon after the Compulsion.

Mr. Ser. *Pringle*. My Lords, I desire he may recollect, whether this Payment was made before the Compulsion or after? Did not he say it was before the Compulsion?

Mr. Edwards. No, I don't remember that.

Mr. Ser. *Pringle*. I desire he may be ask'd, whether he knows any thing of this Payment to Mr. *Carter* of his own Knowledge?

Mr. Edwards. No, I don't know it of my own Knowledge, but I believe it to be very true.

Mr. Ser. *Pringle*. Since he had this Information of one Debt being paid entirely, that he had compounded with others, I desire he may be ask'd, whether he ever charged Mr. *Wijffe* with it?

Mr. Edwards. Yes, my Lords, I did. A little after I went to Mr. *Wijffe*, and I told him that I was inform'd he had paid Mr. *Thomas Carter* his full Demand, and it was rumoured about that he had paid several others these full Debts, and that it look'd unfair. Says he, this Money was lent me by my particular Friend, to pay off some little business Debts to keep me up in my Business, and therefore I was unwilling to Debt to him.

Mr. Ser. *Pringle*. Whether did he apprehend this to be a new Debt contracted since his Failure, or an old one due before?

Mr. Edwards. I don't know when the Debt was contracted.

Mr. Ser. *Pringle*. I apprehend he says, that this Money was lent him by some Friends to set him up again?

Mr. *Laws*. Really, my Lords, we would not interrupt the Gentlemen, but I take it, what they are going on with is not Evidence. We must submit it, whether what Mr. *Wijffe* said is Evidence, either on the one Side or on the other?

Mr. Ser. *Pringle*. We must humbly be in your Lordships Judgment, whether this kind of Evidence be not as proper on one Side as on the other? Most of the Evidence Mr. Edwards has given to affect the noble Lord, has been only Information he has had from *Wijffe* or Sir *Lawrence Carter*, and yet now the learned Manager objects the same Information must not be admitted as Evidence on the other Side. I apprehend if any Favour is to be shown on either Side, it should rather go out in the support of Innocence.

Lords. Go on, go on.

Mr. Ser. *Pringle*. My Lords, we don't oppose their going on, we only beg leave to let your Lordships right. We did not give a Title of his name of what Mr. *Wijffe* said: We have proved the Payment, we have proved the Orders, we have proved the Facts; we did not mention a Word of Sir *Lawrence Carter*, it sprang from this Examination; but we are willing they may go on, if your Lordships think fit.

Earl of *Montagu*. My Lords, I apprehend there is no Occasion to give your Lordships any trouble. If what this Gentleman hath said, with relation to Mr. *Wijffe*'s Payment to his Creditors, is no Evidence, it needs no Answer.

Mr. Ser. *Pringle*. My Lords, we desire that Mr. Edwards may inform your Lordships, whether or no there was any Confession among the Matters relating to this matter, and what their Opinion was?

Mr. Edwards. I don't know of any Confession about it.

Mr. Ser. *Pringle*. We desire that he may inform your Lordships, whether he made any Acknowledgment for his being admitted into his Office, and to whom this Money was paid, and to what Purpose, and how applied?

Mr. Edwards. My Lords, the Steps I took to be admitted into my Office, if your Lordships will give me leave as trouble your Lordships with the Narrative, were these: First, I apply'd to Mr. *Goffey*, one of the Matters, with whom I had had a guarantee: I told him I heard Mr. *Dunm*'s Office would be dissolved, he said he believed it would. Says I, if I could be accepted of these Thoughts of treating for my Lord Chancellor? Says he, you must apply to my Lord's Secretary, Mr. *Goffey*, accordingly I did, and I told Mr. *Goffey* that I had heard Mr. *Dunm*'s Office was to be dissolved. Mr. *Goffey* said he was to be dissolved. I then talk'd to him about the Terms. Mr. *Goffey* told me, As to the Price and the Person, my Lord *Montagu* had left it entirely to the other Matters; for whatever that Place could fetch, was intended to go towards making up Mr. *Dunm*'s Deficiency. Upon that, my Lords, I went again to Mr. *Goffey*, and after a meeting or two, I concluded to give five thousand Pounds if I could be admitted. Whether Mr. *Goffey*, or Mr. *Goffey*, or who went to my Lord, I can't tell. I had not the Honour to see my Lord till I was admitted: But upon their Terms I was approved. I had Directions, I can't say whether Mr. *Goffey* or Mr. *Catnachem* gave me the Directions, but I should pay my Money into the Hands of Mr. *Rogers* the then *Exchequer*; accordingly I did pay five thousand Pounds, and in three or four Days, after I had the Honour to be admitted and sworn in.

Mr. Ser. *Pringle*. My Lords, I desire he may be asked, whether at the time of his Admission any Professions were made by him to the Earl of *Montagu*, or to his Secretary?

Mr. Edwards. None at all, but the Secretary's Fees as usual in these Cases.

Mr. Ser. *Pringle*. Whether at the Time he agreed to pay the Sum of five thousand Pounds for the Office, he knew how the Money was to be apply'd?

Mr. Edwards. Yes, Mr. *Goffey* told me when I went back to him from Mr. *Catnachem*, I remember to have asked him several Questions, and made him several Proposals relating to the Office, for we desired a great deal about its Value; I think I first propos'd three thousand Pounds for it; but he thinking that was not other Office I made him, I found to know how much it was my Lord *Montagu* had intended for it. To which he answer'd, that it was not my Lord's Intention to take any thing for the Admission, but that he had it for the Disposal of the Matters, to make the most of it for the Benefit of the Office.

Mr. Ser. *Pringle*. Whether he knows how this Money was disposed of, and to what use employ'd?

Mr. Edwards. I can't remember the Time, but from first Time before Mr. *Rogers* succeeded his Office, he paid me back this five thousand Pounds which I, in a little Time, paid to the Surveys of the Court.

Mr. Ser. *Pringle*. Whether before he succeeded his Office, he had any Discourse with the Matters how Mr. *Dunm*'s Debts were to be paid?

Mr. Edwards. No otherwise than upon the Terms. I told Mr. *Catnachem*, I have there is a Deficiency of a Deficiency in Mr. *Dunm*'s Office, says he, I believe that you say how much I can't tell; but that can be no Objection to you, because you are no answer for no more than you receive. Matters are all settled and taken care of, that want Deficiency forever there is shall be made good.

Mr. Ser. *Pringle*. By whom?

Mr. Edwards. He did not say by whom, or in what manner.

Mr. Ser. *Pringle*. Had you any Discourse with any other Matter?

Mr. *Plummer*. My Lords, I beg leave to make one Observation. The Counsel says, with any other Matter, and the Gentlemen at the Bar say it was Mr. *Catnachem* told him so.

Mr.



*Mr. Serj. Pryn.* This Gentleman I am examining is one of the Masters, therefore it is not improper to ask, whether he had any Discreet with any other of the Masters?

*Mr. Edwards.* I made the same Objection to Mr. Gaffney, and he answered me much the same. Mr. Gaffney said he could not tell what the Deficiency was, but whatever it was, that would be all tested and made good.

*Mr. Serj. Pryn.* As he had this Discreet with Mr. Gaffney, I desire he may be asked, Whether he hath not likewise had some Discreet with Mr. Rogers how this Deficiency was to be made good?

*Mr. Edwards.* No, I don't remember I had any Discreet with Mr. Rogers.

*Mr. Com. Serj. My Lords,* I desire he may inform your Lordships, Whether at any other Time he had any Discreet with any of the Masters about this matter?

*Mr. Edwards.* My Lords, I often talk'd upon this Subject with the Masters, as a matter which very much concern'd my Office. This I question'd at the Time I came in. They were then all of Opinion that this Deficiency was to be made good. I don't remember that any Body told me in what method or particular way it was to be made good.

*Mr. Com. Serj.* I desire he would inform your Lordships, as near as he can remember, Whether it was said that it would be made good, or that it was to be made good?

*Mr. Edwards.* I can't remember the distinct Words, I took it to have the same tendency and meaning.

*Mr. Serj. Pryn.* I desire he may be asked, Whether he hath not several Times, and on many Occasions, heard the Masters declare, that this Deficiency was to be made good, and by the Masters?

*Mr. Edwards.* I have heard them several Times declare, That they did not doubt but it would be made good, but I never heard them say that it would be made good by the Masters. I have often heard the Masters say they would not make it good.

*Mr. Serj. Pryn.* I desire he may be asked, Whether, about the Time that the Masters advanced the five hundred Pounds a-piece, he did not hear them declare how this Deficiency of *Dinner* was to be made up?

*Mr. Edwards.* My Lords, when I came into the Office, I think the very Day that I was admitted, Mr. Rogers paid five hundred Pounds, eight more paid five hundred Pounds a-piece, some at one Time, some at another, they did not all pay at the same Time. That, I heard, was to go towards making up this Deficiency; but how far the Masters intended to contribute further, I can't say.

*Mr. Com. Serj.* I desire he may inform your Lordships, Whether he did not apprehend that the making up of this Deficiency was a great Concern to him?

*Mr. Edwards.* Yes, I think it hath been of a great Concern to me.

*Mr. Com. Serj.* I desire to know then how it comes to pass that he inquired no more into it?

*Mr. Edwards.* My Lords, I remember I was once asking some Questions relating to that Account, and it was told me, that the State of this Deficiency had been laid before my Lord Chancellor before I was admitted. Upon that I did conclude, that this Contribution of the Masters, of five hundred pounds a-piece, had been in Concert with my Lord Chancellor. I understood it to be so; I don't know whether my Lord gave Orders that it should be so.

*Mr. Com. Serj.* I desire he may be asked who it was that told him so?

*Mr. Edwards.* I think Mr. *Hinsell* told me so.

*Mr. Serj. Pryn.* My Lords, we have done.

*Mr. Relist.* I desire to know what Answer Mr. *Hinsell* gave to the Question he asked?

*Mr. Edwards.* Only that my Lord was acquainted with it, and had the State of Mr. *Dinner's* Office laid before him.

*Mr. Serj. Pryn.* My Lords, if they have done, we only beg leave to observe, that they have been establishing the Notice of this whole Deficiency of the Earl, upon the first Vacancy in the Office, even before Mr. *Edwards* came in; so that the whole Transaction afterwards proceeded upon a full Notice of the Circumstances and State of the Office. The Evidence of the Contribution of the Masters, and of the Earl of *Macclesfield's* towards making good this Deficiency, prevents, in a great Measure, our bringing any Proof to the fifteenth Article, which is now going to be opened.

*Mr. Pleasner.* My Lords, if they have done, I only beg leave to observe, That the very letting Mr. *Edwards* pay his five hundred Pounds to the Deficiency of the Office, and my Lord *Macclesfield's* not taking it as his own Use, is a sufficient Proof of his Knowledge of the Deficiency. And as to this Composition, I have one Question more to ask. I think he says he mentioned it to two or three Masters; I desire to know if he did so, and whether they approved it?

*Mr. Edwards.* I think one of the two or three Masters was Mr. *Lightham*. He was there, and he did say, as I remember, that he thought we might as well lose the whole, as to take so small a Part of such a Debt.

*Mr. Pleasner.* I desire another Question, and that is, if he consulted any of Mr. *Wright's* Creditors before he made this Composition?

*Mr. Edwards.* No, my Lords, I did not know any of them.

*Mr. Serj. Pryn.* How much did he receive in the whole from the Masters?

*Mr. Edwards.* I received five hundred Pounds from nine of them.

*Mr. Serj. Pryn.* Did any of the Masters, and which, refuse?

*Mr. Edwards.* Yes, Mr. *Lightham* refused.

*Mr. Serj. Pryn.* For what Reason?

*Mr. Edwards.* That I can't tell, he did not give any particular Reason.

*Mr. Com. Serj.* My Lords, I believe it may be necessary to trouble your Lordships with asking another Question: Whether this Discreet, in relation to this Composition, was before or after the Composition was made?

*Mr. Edwards.* I believe it was before.

*Mr. Com. Serj.* Then I desire to know, whether Mr. *Edwards*, or any of the other Creditors, acquainted the noble Earl of it?

*Mr. Edwards.* No, I don't remember I did.

*Mr. Relist.* My Lords, I believe we have done with these last Articles.

*Mr. John Relist.* My Lords, the Commons proceed to the fifteenth Article against Thomas Earl of *Macclesfield*, and they have entreated me to lay open to your Lordships the Subject matter of this, and the two ensuing Articles, and the Nature of the Evidence they think proper to produce to make good the Charge in these Articles; by which it will appear as your Lordships very fully, that the Crimes charged upon the Earl at your Bar, which have already been manifested in so many Instances, did not proceed from mistake, or mere Negligence; altho' they would have been Faults not excusable in a Person placed in so high a Station, but that they were the Effects of Art and Contrivance, formed to extort and procure a corrupt and illegal Gain and Advantage to himself. It may seem at first sight very surprising, and may not readily admit of Belief with your Lordships, that a Person raised by his Majesty's special Grace and Goodwill to Stations of so great Honour and Profit, who had received large Additions to a plentiful Income by successive and repeated Grants from the Royal Bounty, that such a Person should condescend to receive, much more than he should use Arts and Stratagems to obtain, further Supplies to his insatiable Thirst of Lucre.

But this your Lordships will plainly see to be the Case, when we have given our Heads to the fifteenth, sixteenth, and seventeenth Articles. Your Lordships have already heard that there was a very great Deficiency and Loss of the Suits money in the Office of Mr. *Dinner*, a late Master in the Court of Chancery, that the Earl at your Bar then presiding at that Court, well knew that there was such a Deficiency, that instead of applying Remedies to relieve the Earl, he made use of several methods to cover and conceal it; being very obvious for him to reflect, that, if such a Deficiency was publicly known, and not effectually remedied, more would ever after purchase a Master in Chancery's Place, at least not at such exorbitant Prices to which the Purchase had lately been raised.

What then will be done? Here was like to be an entire Stop put to this Branch of Revenue which had yielded so plentifully, and proved so beneficial to his Lordship.

The Contrivance, therefore, is to oblige the Masters, who had already paid for their Places, to pay again towards making good this Deficiency, and by an artful drawing them to a Compliance in this Point, to conceal and continue the mischief.

This is what the Commons charge in the fifteenth Article, that the Earl of *Macclesfield*, to conceal the Deficiency in Mr. *Dinner's* Office, did order several Masters of the Court to bring in their Accounts of the Cash, Effects, and Securities belonging to the Suits which were in their Hands, with Intent to testify the Masters themselves, so far, as to oblige them to contribute large Sums to answer the Demands of the Office. And further, to engage them to a Compliance in that Respect, he represented to them, that unless they would do it, the money and Effects of the Suits would be taken out of their Hands: That by this means he did induce some of the Masters to contribute five hundred Pounds a-piece, which several of them did, out of the Suits money in their Hands; and this being done, they were never obliged to bring in their Accounts.

What Answer is given to this Charge? The Answer hath been made, and I need not trouble your Lordships with a Recital of it. But the Earl admits that he gave such Orders that the Masters should bring in their Accounts.

That several Masters did afterwards pay and contribute as is charged; That they were not afterwards obliged to bring in their Accounts.

But then in Excuse he alleges, That this was not done to testify the Masters to make any Contribution to the Demands on *Dinner's* Office.

That what they did contribute, he believes they paid freely, and out of their own money.

That he believes he followed therein a Precedent of the like Nature in the Failure of Dr. *Edelby*.

Far be it from me to call for the Accounts, but was convinced how serious a Work it would be, what Objection it would give to the Business of the Court; so he laid it aside. And observes, that what is lately done with respect to the Accounts of the Masters, shows the insuperable Difficulties of such an Undertaking.

From this Answer your Lordships may reflect, how just the Objection is that the Commons have made in their Replication, when they say, The Earl of *Macclesfield* hath indolently avoided giving a direct and particular Answer to several matters pertinently and certainly alleged against him, which from the Nature of the Facts themselves must necessarily be as his own Knowledge.

For he admits the Facts charged upon him by the Article; but to that Part of it which charges that this was done to conceal the Deficiency in *Dinner's* Office, he makes no Answer at all.

And where the Article charges, that in order to obtain what is owed to be done, he did represent to the Masters, that unless they would comply, the Money and Effects of the Suits should be taken out of their Hands; to this likewise he makes no Answer.

My Lords, it may be difficult for me who am little conversant in Law Proceedings, to lay this matter in as strong Light before your Lordships. But I take the Case to be this.

The Commons charge, that the Earl of *Macclesfield*, to conceal the Deficiency in *Dinner's* Office, order'd the Masters to bring before him their Accounts of the Suits Effects, and threatened that unless they would contribute towards that Deficiency, those Effects should be taken out of their Hands: They contribute, the matter is done, and so no Accounts are ever brought before him.



The Earl acknowledged that he ordered their Accounts to be brought before him, that upon his giving that Order several Matters contributed to the surprise, and that afterwards the bringing the Accounts was deep; but that this was done to conceal *Dorner's* Deficiency, and proceed by the means of taking the Effects of the Sutors out of the Hands of the Masters cannot be denied. What part of the Charge then remains unexplained? I must inform it to your Lordships, whether, upon what the Earl hath allowed in express Terms by his Answer, as well as what he has admitted by not answering at all, the whole Charge of this Article does not stand certified, and the Commons might demand Judgment against the Earl, upon this Article, on his own Confession.

But the Earl adds some things by way of Excuse, I suppose, or Exaggeration of the Offence; here immediately and how easily your Lordships will find offence.

He denies, that the ordering the Masters to bring in their Accounts, was done to furnish them to make any Contribution towards *Dorner's* Deficiency, and yet there is not the least Appearance of any other End or Design, for which it could be done, nor does he mention, or so much as pretend to any other End which, with the least Colour of Reason, could be intended by it; he says, indeed, he had a mind to know the State and Condition of the several Offices, that he might be able to make proper Regulations concerning them; but the thing was done before he had the Knowledge given him, and before he made one Regulation in the matter; and yet he solemnly declares that this was his real and whole Intention: If it was his Intention, how came he to alter it so soon? Could it not last till one Regulation was made in a matter which wanted it so much?

Your Lordships will from hence judge, That the Crime which the Commons charge upon the Petition, your Bar was not a Son of Ignorance; he was informed of the mispractices of the Officers of his Court, he was conscious that it needed Regulation, he had formed a Thought and Intention to make such Regulation; but, alas! it was proved abortive, and the intended Reformation, however necessary for the Honour of the Court, as well as the Safety and Advantage of the Subject, was soon laid aside: A Contradiction too weak and too grossly inconsistent, as not to be accounted for in any Person, who had not been capable of pleading Innocence and Pardon to the same Fact.

However his Lordship having found it necessary to excuse this Proceeding with the Masters, by pretending an Intention to make such Regulations concerning them, it became necessary, in the next Place, to make free Apology for not proceeding to such Regulations.

And for this, he says, that it would be a difficult and tedious Work; That it would be an Obstruction to the Business of the Court; That what has been lately done shows the insuperable Difficulties of the Undertaking.

I may reasonably fear I should grow tedious to your Lordships if I should attempt to take notice of all the Inconveniences, Inconsequences and Evils in the Answer to this Article.

Upon what account was the Petition now at your Bar advanced to the highest Station of the Law, intruded with the Distribution of Justice and Equity in his Majesty's supreme Court in *Windsor-Hall*, if it was not to secure the Property of the Subject to those to whom it did in Conscience belong? And upon what Account were the monies brought into Court deposited with the Masters, but only for safe Custody, till it appeared to whom Equity would determine the Right?

But when it was once manifest that those, who were employed in this trust, had shamefully broken it, and by notorious mismanagement were likely to bring Ruin to all the Sutors of the Court, was it fit to cherish the cover up the Evil, because it was a difficult and tedious Work so necessary? Was it likely to be less difficult by the Delay, or rather did it every Day propagate and increase the Mischief, and make it less capable of Remedy? Or could any thing be more proper for the Business of the Court?

Your Lordships have too much Sagacity not to discover the Weakness of such an Excuse, nor will you easily be persuaded to believe, That the Earl of *Monmouth* was only going on in a Path his Predecessors took before him, or that he is to be believed, because what hath been since done hath been with Difficulties in the Undertaking.

It is known how, upon the first Failure, in the Time of his Predecessor, an official Remedy was immediately applied; and that those, who have since attempted to give an helping Hand, have presented any new Edition of the Evil complained of; and if the undertaking was attended with Difficulties, their Care and commendable Zeal for the public Service have already been able to surmount them in some measure; and the gross Encouragement given by the Earl of *Monmouth* had laid the true Foundation for those Difficulties, as if he had designed to make them insuperable, that they might serve for such a sort of Excuse as he now endeavours to draw from them.

But the Earl alleges further, that he believes the Masters, who consented towards *Dorner's* Deficiency, did it freely and out of their own free will, and that in bringing them to contribute, he followed the Precedent in Dr. *Edwards's* Case.

He does not trouble your Lordships long upon this Branch of the Argument, since so one besides his Lordship can well believe the Masters consented freely; and the Proof we shall lay before your Lordships upon Head will give full Satisfaction, that none of them did it freely, nor of them out of their own Money; nor is it the Crime the Commons charge, that the Masters were prevailed on to contribute towards the Deficiency; but that the Earl, whose high Station made it his Duty, when he was informed of the Deficiency, to take care to redress it, did not, as the Case of Dr. *Edwards* proves, that the whole Money belonging to the Sutors should be effectually answered; but instead of following the Precedent in the just and honest use of it, he turned it to answer his own corrupt Purposes, and to conceal from publick Notice, that Loss to the Sutors which it was his Duty to have wholly prevented.

The next Article we proceed to is the sixteenth, which charges, that the Earl of *Monmouth* having obtained an Order of the 17th of *March*, in

the tenth Year of his present Majesty, whereby Mr. *Edwards*, who succeeded in Mr. *Dorner's* Office, was ordered to pay 1000 l. part of a very large Sum due to her, which had been paid into *Dorner's* Hands; Mr. *Edwards* complained of this as an Hardship to him, who had never received the Money; upon this the Earl would have perjured the rest of the Masters to pay the Money to prevent a Parliamentary Enquiry; and yet insisting, he paid it himself to one Mr. *Lockman* for the use of the said Mrs. *Clay*, with Intimations, however, that she must not expect any more of the 10000 l. which had been paid on her account into *Dorner's* Hands.

Your Lordships will be surprised at the Detention here made, both of the Guilt and the Boldness of the Offender; that the Person, who is so formidable of his Crime, as to tell the Masters this matter would affect both himself and them, who discerns the monstrous Consequences of the Mischief before him, who foresees the Punishment of that Crime by a Parliamentary Enquiry; that this Person, instead of applying Remedies to the Evil, should use little Artifices only to conceal it.

What Answer gives the Earl to this Charge? He admits the Order made, and that Mr. *Edwards* refused to pay the 1000 l. that he himself paid the Money, and told *Lockman* that was all they must expect from him; but he does not believe he had any Discourse with the Masters to persuade them to pay the 1000 l. to *Lockman*.

Your Lordships must be convinced of the Guilt, when the Offender himself hath set the Affirmance to deny it; he cannot deny but that he knew and regretted the Consequences that would ensue what was done, that it would produce a Parliamentary Enquiry; that it would affect himself as well as the Masters, and that it would hazard the Possession of their Offices. Your Lordships have now an Opportunity to vindicate the Honour of Parliament, and to leave this Indefensible and Polluted; that this Person, who fornicate their unwarrantable Actions will give Occasion for a Parliamentary Enquiry, shall not be able, by any Commissioners, by any Means whatever, to evade the Justice of it.

As to the last part of this Article, which charges, That on a Motion in a Cause, *Harper* against *Cayland* others, relating to 300 l. which having been paid into Mr. *Dorner's* Hands was in Danger of being lost, the Earl failed and deceitfully declared he had heard there was a Deficiency in *Dorner's* Office, but knew nothing of it as public News. The Commons will give sufficient Evidence to your Lordships of the Truth of this Charge.

The Earl indeed gives a large Account of this Cause and the Orders made in it, and then concludes, he believes he expressed himself to this Effect, That he had indeed heard of *Dorner's* Deficiency, but that it had never come judicially before him upon complaint of any of the Sutors of the Court: that several Circumstances taken Notice of at large had concurred thereto; and adds, that he said he did not know how all these things would come out, and expected himself to that effect and no other; and upon all this Circumstances in the Answer, without any denial of the Words as they stand charged, we have reason to believe your Lordships would be very well satisfied without further Proof, that the Words mentioned in the Article were undoubtedly said by the Earl of *Monmouth*.

It is further observed by the Earl, that this happened after such time as the Masters Accounts had been laid before the Lords of the Council, and had been under the Examination of the Judges and others to whom they had been referred by his Majesty; and there may be some reason to doubt whether the Knowledge of a Deficiency had been so far declared by his Lordships, if the Examination under which his Majesty's abundant Goodness and Care for his People had put these Accounts, had not already laid open, and made a public Discovery of it.

The 17th Article charges, That the Earl of *Monmouth* knew of the great Deficiency in *Dorner's* Office, yet to conceal it, in order to carry on his corrupt and unjust Designs, he made Orders upon Mr. *Edwards* for the payment of several Sums, which were paid without Regard to the Proportion the rest of the Sutors were justly entitled to out of *Dorner's* Effects, and consequently to their great Loss and Prejudice: To this the Earl answers with his usual Candour, That he never endeavoured to conceal the Deficiency; but as he was under a full Persuasion it would in due time be made good, that he did not think it incumbent on him, *ex officio*, to make a Declaration of an average; that he doth not know any Order was made by him for Mr. *Edwards* to pay Money lodged with Mr. *Dorner*; but believes several Orders were made by the Court for that Purpose.

Your Lordships, upon the bare reciting the Words of the Answer, will perceive the Art and Fallacy of the Answer; he doth not know any Order was made by him, but believes several were made by the Court; as if he could hope to make your Lordships believe he was a Stranger to, and unconcerned in the Orders made by the Court, of which he was the only Judge.

He admits he did endeavour to conceal the Deficiency, but was persuaded it would be made good in due time, without acquitting your Lordships with any Grounds for that Persuasion, or even mentioning what he thought that due time would come.

He intimates it was incumbent upon him to make a Declaration of an Average, but thought it not incumbent upon him to make it *ex officio*: He could not deny it to be the most equal rule, that if a loss was not inevitable, an Average ought to be made, that the loss might be borne equally and in proportion among all: He could not deny the making Orders to pay sums was inconsistent with, and destructive to this Equality; and he could not however think it incumbent on him, to do this *ex officio*: And yet it belonged to No-body's Office but his own to effect it.

Thus your Lordships may observe how, to every Article, the Answer either admits the Charge, or if less generally, or formerly Circumstances to evade it, when the Evidence of the Fact will not allow him to deny it; yet he would be thought to say something at least in excuse. But his Knowledge of your Lordships superior Understanding, ought to have deterred him from all Expectations of imposing upon your Lordships by any little Shifts and Artifices of this kind; nor should he hope to pass here the Answer as sufficient, which must have been reported contrary, if I am rightly informed of the Practice, by any of the Members of his Court.



But I shall not dispute your Lordships your Observations in relation to the Charge of bribery, what is admitted in every one of these three is sufficient to justify the Charge of the Commons, and what is not admitted is but imperfectly admitted, we do not sit, by Writings and not by Proof, to make out to your Lordships entire Satisfaction.

My Lords, it is a Breach of the most sacred Privilege, to maintain the Cause, established by the Commons of Great Britain, in the late said, sixteenth, and seventeenth Articles of their Impeachment against Thomas Earl of Macclesfield. And it is with this gravity, Charles the First made that Protest, since I come to demand that Justice, which your Lordships are always obliged to administer, to every Subject of Great Britain, and that as I cannot but be fully assured of your full inclination, to do equal Right, where it is demanded by the Rights of Common-law, the respective Rights of the whole united Kingdom.

It is, my Lords, that the Earl now under Prosecution, who both before and since your sitting in the Walls of this House, was both so long and so warmly of your Lordships great Integrity, and Wisdom, should not thereby be deterred from attempting what might bring Honour to your Country. But it is full more unreasonable, that a Person, who hath had full Liberty, and more of that Judgment and Integrity, whereby you fully distinguish between right and wrong, should have, by the Artifice of Writings, and false, and evasive Expressions, that he should ever hope, I say, my Lords, by such Expedients as these, to hide himself from the Eyes of your Lordships impartial Justice.

The same Gentleman, who hath preceded me upon this Head, hath been obliged to several Articles now under Consideration, and hath fully and clearly denied the Suggestion and Infidelity of the Answer that are given to them, that I shall not need to be long upon that Head, it would only be to add any thing new to what hath already been observed, and not the reasonable Fidelity and Inconduciveness with which his Answer shews, commonly supply full Materials for Observation.

But I shall cannot myself only to take Notice upon the Answer to the sixteenth Article, that the Earl stands in a manner convicted by his own Confession. He admits the Fact, but would avoid the Consequence, by saying, that he really intended to make the Masters bring in their Accounts, although he did not do it: if it was intended, why was it not done? It was intended, and a sufficient Work.

I am surprised, my Lords, to find that any Person should expect to satisfy your Lordships, by so weak and frivolous an excuse.

A Person who presides in the highest Court in Westminster-Hall, is informed of so unwarrantable Practices of the Officers to whom the manner of the Summons is intrusted, which, for want of due Care, hath already proved very pernicious, and result in Time prove destructive to the Property of all the Barons of that Court, unless some speedy Check be put to that growing Evil, it is conceived the matter needs Regulation, but he less in so on, to leave it to be a difficult and tedious Work to reform it.

In moral Law, my Lords, the Continuation of the Practice of an ill Habit, because it is difficult to break it, is so far from excusing, that it is justly said to aggravate the Fault, and I don't doubt but that your Lordships will have the same Sentiments in this Case, for since it was necessary to apply a Remedy, the sooner it was done the better, and the Difficulty of the Work should have been a Spur, rather than a Check to any serious Endeavour for redressing it.

In the Answer to the sixteenth Article, your Lordships will observe the same Prosecution faced through the whole. The Widow Earl having a considerable Sum of Money, to which he was entitled, brought into Court, and deposited in Mr. Dore's Hands for the safe Custody of it, retainer for 1000*l*. part of his own money, such a Pension could not be denied entirely, without bringing on a false Equity of the Cause, and Objection as to the Embezzlement which had happened in that Office, and the Discovery must have brought on a Necessity of remedying the Evil that would thereby have been made to public, and so notorious.

An Objection therefore is granted, that the 1000*l*. should be paid; but then Mr. Dore is renewed, how to make that Payment without discovering to the Public the Mismanagement, which must have put a Stop to the Sale of the Masters Places, which were disposed of at exorbitant Prices, and here, but so unreasonably, though illegal Gain. Mr. Edwards would not say, he had no money of Mr. Dore's in his Hands; the next Application was made to the Masters of the Court, to see if they could be prevailed upon once more to raise a Sum by Contribution amongst them; to this had they were to do, that if they did not comply, Dore's Delinquency would be discovered, and that might occasion a Parliamentary Inquiry, the Consequence of which might be, the Forfeiture of their Offices, brought contrary to the Statute of Edward the sixth: that might affect himself a little, but then much more, all this, my Lords, is charged in this Article, and not denied by the Earl, but in such a lamentable, evasive manner, as betrays more Guilt than an open and ingenuous Confession.

It adds my Observation, in that little View I have been able to make of past Times, that any Judge of a Court in Westminster-Hall, should own the Knowledge of so great a Crime in the Officers of his Court, as that they came into their Places contrary to Law, without any Certainty, or Elance for it.

But that a Person raised by the unmerited Bounty of his Majesty, to preside in the highest Court there, to conduct the Administration of Justice according to the Rules of Equity and good Conscience, as his Majesty's Vicegerent in that great Station, that such a Person should not only be conscious of the Illegality of the Masters obtaining their Places, and a Party so much illegally, but should have the Assurance to make use of that as an Argument to exact Money from them, in order to prevent the Discovery, and the Punishment consequent thereto, will, I persuade myself, lay up in your Lordships the greatest Indignation.

It seems be apprehended the Tenure of a Prosecution by Parliament might have some Effect upon them, and engage them to comply with its Demands, although it had not the least Effect upon them. It was

a proper Expedient to bring them into a Contribution of 1000*l*. but he is not sufficient to deter him from those Practices, which justify merited a Prosecution.

Our Ancestors thought it became them to keep in Awe the great Subjects as the Realm, and more were too big to be rally to the Crown, and therefore they did the Public, the Case of *Abraham*, *James*, *Richard*, the second's line, and Cardinal *Wolsey* in *Henry* the eighth's, with many others, some of which have been already mentioned to your Lordships, are full of Instances of it. And we have more Observations of this kind, that we have the same Regard for the Honour of Parliament, and the Good of the People, that we are ought to have to transfer the Laws, be his Situation, or his Power, never before advanced, upon pretext of Impunity, since a single Parliament can reach its small lusty, and punish the most insolent, corrupt Officers, that he, who is raised within the limits and boundaries of the Court of Awe and Reverence to it, must expect to fall a Sacrifice to the Power of their Justice.

Your Lordships have been an Instance of one placed in the Head of the Law, who is conscious that his Actions are contrary to it, who makes no Scruple of avowing this, where it may serve his Interest, desires a Parliamentary Inquiry, and goes on in Practices which he knows, and is conscious to be illegal. Your Lordships will observe how he endures himself from Danger, and by an insidious Degree of Diffidence, that he openly avows, to raise a Contribution from the Masters of the Court, he more publicly denies, with Design to carry a plausible appearance in his Answer to the People.

The Delinquency of Dore at full before a public Clemency is given to Mr. Clay only, but many others waited their Money deposited in the Custody of the Masters, and the Sumers then made open Complaint upon this Subject. In the Cause therefore of *Harper* and *Gage*, a motion being made, that should be lodged in Dore's Hands might be paid into the Execution of the Conscience directed by the Court, he who has been to long informed of the shameful Embezzlement of the Money of the Sumers in Dore's Office, who had invented so many other Causes to conceal his criminal Knowledge of it from the Public, in order to serve his own private ends, corrupt Delights, the matter being now laid open to your Lordships, he could no longer deny the Knowledge of what he was so plainly informed of, that therefore all By-standers might acquiesce in Care and Concern for the public Good was so extraordinary, that he could not have forbore to have provided the mischief if he had been before apprized of it; he then publicly and fully declared that he had been there was a Delinquency in Dore's Office, but that he knew nothing of it, but as public News. In the Earl's Answer, my Lords, he explains this Expression, by saying, that it never came judicially before his opening the Truth of the Sumers of the Court: This I am persuaded your Lordships will think a very poor Excuse, that he who was the Provider of all the Fortunes of the *Faber* and *Lambert*, should not, upon a full Information, or even Suspicion that they were like to be *Lafers*, can a strict Examination to be made into it.

It can scarce be believed a Person who has so great a Capacity to judge in what manner he ought to act, should ever descend to so low a Degree of unworthy the Station in which he was placed, to unworthy the Dignity and Honour to which he had been advanced, as to deny the Knowledge (otherwise than as News and anecdotal Discourse) of what he believed to be frequently informed of, and what he had taken Pains so long, and so difficultly to reveal.

I need not say any Words to repent to your Lordships the Instance of such Prosecutions, who will, upon the self Information, be full of every thing that may form in the least Degree to disparage the Rules of Honour. It is indeed almost incredible, that a Person advanced to so high a Part of our noble Body, should so far forget himself and your Lordships, that if he could have expressly denied by his Answer, we must have paid to have paid Credit in, though we could have proved it by indirect Witnesses; but his Answer will sufficiently convince your Lordships of the Truth of the Allegations, for he who could not directly do it, he was forced to prove a Crime, and by his own Silence, in a matter of such high Nature, he concluded to be guilty of it.

I have already taken your Lordships to long upon this sixteenth Article, that I shall not detain the Liberty of trying your Patience by making any Observations upon the seventeenth, but shall leave it to the Gentleman that is appointed to add in it.

It cannot only repeated Instances of a corrupt Endeavour, still to conceal the Knowledge of that Delinquency from the Public, which it was his Duty to have prevented, or at least to have exposed, and rather to have made it good than have concealed it. What Ground or Reason could there possibly be, when a witness at the King's, if it did happen by Accident, should with so much Indulgence be covered and covered, when this Concomitant could answer so good or honest Purpose, but why the Delay increase and grow more desperate, and tend to bring Delinquency and Ruin on the Side of the Court?

But as your Lordships, by the Proofs upon the former Articles, had an Opportunity to take notice what large Sums of Money had been paid for the Purchase or Exchange of the Places of the Masters of the Court of Chancery, it is natural to conclude hence, that the Masters were necessarily to be indulged in making use of the Sumers Money in that Head, in order to make up the vast sums they had given for their Offices; and if there had been mismanagement in Attempts of that Kind, which should have Administrators for such Ends could hardly be avoided, the Discovery of such a mischief would have made it absolutely necessary to have raised the Money from those who had proved false and dishonest Servants, or at least to have obliged them to have given proper Securities to indemnify those, whose Fortunes were injured to their Care, from any loss which might happen by their mismanagement, the Consequence of which Corruption must necessarily have been a Reformation of the exorbitant Prices which of late have been given for those Places.







Held to be read before the Masters in the public Office, and there the Masters spoke of what they thought proper.

Mr. Serj. Parg. What Intimation was there from him, or from any other Parties, of any Direction from my Lord Macclesfield relating to the Payment of this 500*l*. Contribution?

Mr. Coveny. I think my Lord Macclesfield's Secretary was there at the time Mr. Durner's Letter was read. I think he had spoken what he had principally to say before he came in; but I think he had the Consequence might be fatal to the Masters, if we did not take care of this Delinquency.

Mr. Serj. Parg. We would not presume to interrupt the learned Masters; but I think the particular time when this was done, and the particular Sums that were paid by each Master should be stated. I remember Mr. Edwards was pleased to say, the full 500*l*. that was contributed was paid upon the Day he was sworn in, which I think was in May, 1721. We desire therefore that he would please to express the Day when every other Sum was paid in.

Mr. Serj. Parg. We only desire this Gentleman to speak to his own Payment.

Mr. Coveny. The Receipt is dated August 11, 1721. Then Mr. Edwards flapt to reach Money.

Mr. Serj. Parg. We desire he may be asked how he paid that Money, whether voluntarily, or freely, or upon what Ground?

Mr. Coveny. I beg Pardon, but I must beg leave that the Witness may declare at what time this Transference was?

Mr. Coveny. It was the Day the Receipt bears Date, the Transference happened August 11, 1721.

Mr. Serj. Parg. We desire he may be asked, what induced him to pay in this Sum?

Mr. Coveny. It was flapt as a Contribution towards making up Mr. Durner's Deficiency.

Mr. Serj. Parg. My Lords, we desire that this Witness may be asked, Whether there was any preceding Promise or Agreement to pay this Money?

Mr. Coveny. My Receipt mentions a Promise.

Mr. Serj. Parg. Then I desire to know how long before this Promise was made?

Mr. Coveny. Soon after the Deficiency was spoken of in Mr. Durner's Office, in February, 1720, about three Weeks after I was admitted.

(Mr. Edwards called.)

Mr. Serj. Parg. My Lords, we only call Mr. Edwards to ascertain the time when he received the Money of Mr. Coveny for his Contribution.

Mr. Edwards. My Lords, according as I have taken it out of my Book, it was the 11th of August, 1721.

Mr. Serj. Parg. Now, my Lords, we shall shew the manner how this Payment was made.

(Then Mr. Lightbourn was called, and appeared.)

Mr. Parg. I desire Mr. Lightbourn may be asked, if he was ever preferred to pay 500*l*. by whom, and for what?

Mr. Lightbourn. Not long after Mr. Durner's Failure, Mr. Catesby—

Mr. Coveny. My Lords, I hope Mr. Lightbourn shall mention the time as he goes along.

Mr. Lightbourn. Not long after the Failure of Mr. Durner, I met Mr. Catesby by accident at my Lord Chancellor's Room at Wyndham, and he asked me, whether there had been mentioned to me a Proposal of paying or advancing 500*l*. apiece towards making up the Deficiency of Mr. Durner's Office, for carrying on the Business there? I said I had heard it, he said it was proposed that it should be immediately raised, that the Business of the Office might be carried on, till Mr. Durner's Effects could be disposed of and sold; and some Intimation was given, that possibly we might have our Money again as Durner's Effects came in. I have heard such a Thing talk'd of, says I, but I will never come into it; I thought it stood with dangerous Circumstances, and a dangerous Precedent, and therefore I was refused I would not contribute.

Mr. Parg. Can you recollect what passed afterwards?

Mr. Lightbourn. He said all the rest would. I said I would not; and I continued the same Resolution when I talked with the Masters about it.

Mr. Parg. I desire he may be asked, if my Lord Macclesfield ever promised him to pay this Money, and when?

Mr. Lightbourn. It was often mention'd to me by the Masters, why I did not contribute as the others did, and I was made not a little uneasy for not having done it. I think, in the beginning of the Summer 1722, as near as I can remember the time, my Lord Chancellor coming out of Court at his own House, (where I had the Honour to have been sitting with him) said, Mr. Lightbourn, I would speak with you. I followed his Lordship into his House up into his Study, where my Lord was pleased to say, Mr. Lightbourn, I am very sorry to hear that you have not contributed your 500*l*. towards making up Mr. Durner's Deficiency; for, says he, it must be considered, that it will be attended with ill Consequences, if that sum is not taken care of. I asked him, was it your Lordship's Proposal? He said it came from the two senior Masters, but he approved of it. I answered, that if it had come from his Lordship, it might have had a different Consideration, but as it was theirs, and to serve their own Purposes, I hop'd his Lordship would not insist upon my coming into it. The two senior Masters had been long in their Offices, were grown in Years, and were willing to get out, and sell at high Prices; one of them had flapt out, and the other was about it; that I was but lately come into the Office, and intended to continue in it, and said, I will not concern myself in this Affair, unless the Office can be put upon such a Foot that the Salaries may be made safe and easy.

Mr. Serj. Parg. My Lords, I desire he may be asked, Whether at this time my Lord Macclesfield made use of any Reasons, Arguments or Promises towards prevailing upon him to pay this Money?

Mr. Lightbourn. I can't say my Lord said me; he left me to my Inclinations, but advis'd me to pay it, and not to stand out; so do as you think fit, and not to stand alone in it.

Mr. Serj. Parg. Whether did he mention of what Consequence Advantage it would be to the Masters?

Mr. Lightbourn. His Lordship said, if there were not some reason as it might be of all Consequence, and that this was the only Expedient thought of. I told his Lordship, I thought there were many others, and that was one I would not come into; but that it was not for me to fame to debate to his Lordship, I thought it did not become me.

Mr. Serj. Parg. My Lords, I desire he may be asked, if after this encouragement my Lord Macclesfield did not again demand Money of me when?

Mr. Lightbourn. My Lords, in the Year 1724, about the latter end of June I met Mr. Catesby by accident at the Tavern. He came in and desired me to go into a Room, for he had something to say to me. He said, that my Lord Macclesfield had sent him to tell me, that he would that I had not paid my 500*l*.; that there was 1000*l*. to be paid to my Lord, or to Mr. Ludlow, that must be immediately paid; that my Lord had been apply'd to, and much press'd, and it must be forthwith paid, and he expected that I would advance the 500*l*. and be the rest of the Master's 500*l*. apiece, which would make up the Sum I had to Mr. Catesby.

I cannot think my Lord Macclesfield would send you on such an Errand; and I said my Lord formerly I would not pay it, I was with his Lordship this Morning and he said nothing of it, and shall have the Honour of waiting upon him in a Day or two, and if he then think fit to talk to me about it, I shall give him a proper Answer; but I don't care to lose my Messages to him by you, because Messages are liable to be misheard and misinterpreted, and I will give my Answer myself. Upon this Mr. Catesby began to be angry at my distressing him, and thinking that he came of his own accord, and assur'd me that he came of my Lord Chancellor's Privy. I repeated the same Answer again to him, that I would give my own Answer to his Lordship, and would come more by him. In a Day or two after there was an Intimation given, that my Lord Chancellor expected all the Masters to attend him at a-Clock in the Evening; we imagined that it was a call upon the other Masters for more Money, and for my five hundred Pounds. They had all declared to me they would never contribute any thing more, and therefore I desired them that, in case that were the Business, they would signify declare their Thoughts before my Lord himself. I believe it was the senior Master I desired to do it, saying to him, It best becomes you to give the Answer. Says he, if the Question be put, I shall propose that we may have time to consider of it, I desired he would not do that, he would encourage my Lord, and he might think that if he importunately further we would comply, and for my part I am determin'd not to do so.

So we went on to my Lord, and were carried up Stairs; when we came there, my Lord said, there hath been an Application made to me on behalf of Mr. Catesby or Mr. Ludlow, I think he was the Person expressly nam'd, and that he had been much press'd by Parties of Dissimulation; and that he came to me, and said, Mr. Lightbourn, I am extremely surpris'd you have not paid the 500*l*. as the rest have done. After he had said a good many Petitions and Arguments, I told his Lordship, it was with great Concern that I refus'd to do any thing that his Lordship could desire of me, and that I had consider'd of it, and never repented of it, and I would not contribute one Farthing, and that I had given his Lordship my Reasons before; if he would hear them again, I would repeat them again, but this one was of most Weight with me, that it might be a Precedent, and look'd upon as an Undertaking for one another, if ever the should be a mutual Inquiry into these Matters, and that I would answer only for my own Debits: That as I had not contributed towards the Master's of their Office, I would not contribute towards Payment of their Debts; that I did not know but the paying Contribution to make good the Demands on other Officers might make Deficiency on our own; I had always refus'd it, and never repented of it, and I had the pleasure of hearing every Master repeat the doing it. I called upon the rest of the Masters to deal magnanimously with my Lord, to tell him what they had said when they had talk'd over the Matter among themselves, that they would not contribute any more; upon this Mr. Mallet got up and said, he would never do it. Then my Lord said, he said would pay it himself, or take care it should be paid.

Mr. Parg. I desire he may be asked, if my Lord Macclesfield used any Intimations with respect to the Payment?

Mr. Lightbourn. I forgot that my Lord Macclesfield was pleased to say that the Consequence of not contributing to raise a Sum of Money to pay the Debt of Mr. Durner, might be, that the Money and Securities would be taken out of our Hands. I told him I was ready to deliver both the Money and Securities the next Day, if his Lordship made the proper Orders, and I was properly indemnified. I think his Lordship said further, this may produce a Parliamentary Enquiry, and should it be refused that purchasing a Master's Place is contrary to the Statute of the fifth and sixth of Edward VI. you might lose your Places, to that I replied, I would quit my Office rather than hold it upon those Terms of paying other Masters Debts. He went on farther about a Parliamentary Enquiry; I said, let the Consequence be what it will, I would not pay it. Then I called upon the other Masters, who said they would not pay it.

Mr. Serj. Parg. My Lords, as to the paying of the 1000*l*. of Mr. Catesby or Mr. Ludlow, I desire Mr. Lightbourn may be asked, whether the late Lord Chancellor was pleased to say, That he had or would take care to pay the 1000*l*. himself; or what the particular Expression was that he then made use of, that he had taken care, or would take care?

Mr. Lightbourn. I can't remember, at this distance of time, whether he said he had, or would take care to pay it. There is so little Difference that I cannot say which. I do not pretend to say that were the very Expressions my Lord said to me, or I to him. I speak as to the Fact or Part of our Conversations; I would neither aggravate nor lessen matters.



Mr. Serj. Peng. THE NEXT Witness we call is Mr. *Halford*, who was present at this Conversation.

[Mr. *Halford* swears.]

Mr. Serj. Peng. We desire Mr. *Halford* may be asked, whether he was present at this time, as is mentioned, when the *Masters* were required by the Earl of *Manfield* to raise this *recess* for Mr. *Glynne* Mr. *Luttrell*?

Mr. *Halford*. My Lord, I was present at that meeting. It was desired, as I apprehended, by my Lord *Manfield*, for us to attend him at 12 o'clock. When we came up there, I think, the first thing that my Lord *Manfield* said was, he asked Mr. *Luttrell* why he would not pay his *costs* at others had done? Mr. *Luttrell* did give this Answer: That he had told him several times before, that he would not do it, he had given his Reasons, and it was in vain to repeat those Reasons again, he was of the same Mind yet. My Lord then spoke of a Demand there was of *recess* on Mr. *Dunne's* Office for one Mr. *Glynne* and Mr. *Luttrell*, and I apprehended my Lord mentioned it as if he intended that the *Masters* should embrace some in making it up; but he after said he would take care of it. After that my Lord did not mention the *recess*, but, in general, spoke of the Deficiency in Mr. *Dunne's* Office, and it ought to be made up; and he proposed, as I did apprehend, that the *Masters* should make it up. Mr. *Luttrell* did still seem to be declare; upon that I told my Lord it was very undesirable to contribute towards a Deficiency which nobody knew was a want; and the doing so would only be turning one's self, for fear of being undone, and, for my Part, I was unwilling to do it; my fear of it was, that they thought it.

Mr. Peng. Then, he went on to say my Lord shewed himself to Mr. *Luttrell* that he did not like in general Terms, or how?

Mr. *Halford*. He spoke pretty sharply to him.

Mr. Serj. Peng. What was said by the Earl of *Manfield*, to persuade the *Masters* to come into this Contribution?

Mr. *Halford*. My Lord said it was a grievous thing there had not been that due Care taken there ought to have been; that those who came into it all their Money, and those that came after would have none; which would make a great Claim upon the *Masters*.

Mr. Serj. Peng. What was said upon that?

Mr. *Halford*. I don't remember what in particular.

Mr. Serj. Peng. What was said as to a Parliamentary Enquiry?

Mr. *Halford*. I remember my Lord said, it might perhaps occasion a Parliamentary Enquiry. Suppose, said he, the Parliament should resolve, that the Office of a *Master* on Chancery is a Place relating to the Honour of Justice, and resolve that every Body that had paraded that Office within the Statute of the eighth year of Edward VI. It may of itself be in great Danger, in the Loss of the Disposition of the Office; but it will reach up to the Loss of the Place themselves.

Mr. Serj. Peng. Whether or not then that should my Lord, in what manner it might come before the Parliament?

Mr. *Halford*. I asked my Lord my self, and said it would be a Favour if he would give us his Opinion, in what manner it might come before the Parliament, and in what way? He said, it might come in by the Committee for Courts of Justice, appointed by the House of Commons at the Beginning of every Session. But when I came out of the Room, I said, it was more likely to come by way of Complaint than that way.

Mr. Serj. Peng. I desire he may be asked, whether, at this time, the *Masters* agreed to come to a Contribution to pay this *recess*, and what was said about it?

Mr. *Halford*. It was disagreed to; and when it was so, my Lord did say, that he himself would pay the *recess*.

Mr. Serj. Peng. We leave that as a Circumstance of my Lord's endeavouring to prevent a Parliamentary Enquiry.

Mr. Serj. Peng. My Lord, we desire Mr. *Halford* may be asked, whether he can be positive as to the time of this Meeting?

Mr. *Halford*. I believe it was in *July* or *August*, 1724.

Mr. Serj. P. A. You can't be positive?

Mr. *Halford*. No; I can't be positive.

Mr. Serj. Peng. Whether there was, at that time, any Proposal shew'd to raise Money, by any annual Sum or Payment out of the Offices, towards paying the Deficiencies by Degrees?

Mr. *Halford*. I do not remember any such thing.

Mr. Serj. Peng. Was such a Proposal made at any other Time?

Mr. *Halford*. I don't remember that it was ever proposed by my Lord, nor heard talk among the *Masters* of a great many Schemes and Proposals, but they never did agree in any one thing.

Mr. Serj. Peng. I desire he may refresh his memory, and that he may give your Lordships if there was not a Proposal made, that if they might be maintained in their Offices, as they then were, they would not then consider that a Contribution should be raised among the *Masters*.

Mr. *Halford*. No, I don't remember that. I believe it was mentioned, in supposing the *Masters* might be continued on the foot they were, and they would not think it worth their while to do so. I said it might be fit to be considered, and I did not know but it might; but there was no method proposed, what would be difficult; and I don't remember that any thing was agreed to.

Mr. Serj. Peng. I desire he may be asked, whether, after they had contributed the *costs* a piece, their Accounts were called for by my Lord *Manfield* in the manner they were called for before?

Mr. *Halford*. I don't know but they might. The manner of calling for the Accounts was this: There was a Writing left in the publick Office, in which there was a great many Names in what Michael the Accountant should be brought in. I had proposed more, and named till they could be called for, but they were not called for nor demanded; so I never saw.

Mr. Serj. Peng. I desire he may be asked, whether this Deficiency, in relation to the raising of Money, was to pay off the whole Deficiency, or to pay off this Demand of 10000?

Mr. *Halford*. I don't remember any Proposal, but only a Discourse was started. I did not apprehend the whole Deficiency was intended to be paid.

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to be paid; for I never knew any Body that could tell what the whole Deficiency was, till of late.

Mr. Serj. Peng. I desire to know, whether he speaks this from his Memory?

Mr. *Halford*. I can speak from nothing but my Memory.

Mr. Serj. Peng. I desire that he will inform your Lordships, whether he hath not remembered, that in November last there was a Signification to the *Masters*, and to him in particular, as being in their Account?

Mr. *Halford*. Yes, my Lord.

Mr. Serj. Peng. If there was such an Intimation in November last, to deliver in their Accounts, how comes it that you say you have them by you still?

Mr. *Halford*. This is a Mistake; you misapprehend me. The Account, that I mentioned before, was what was immediately called for after the Failure of Mr. *Dunne's* Office, but the Account in November last was what was called for by the Judges, and delivered into the Council.

Mr. Serj. Peng. I desire to know, whether Mr. *Halford* can remember what particular Directions were made in Accounts, and whether the Accounts he prepared were drawn up according to such Directions?

Mr. *Halford*. Those Directions were many, in drawing up my Account, I did not draw it up exactly according to those Directions; but I drew them up to show the Balance of Cash and Securities in my Hands.

Mr. Serj. Peng. I would desire to know, whether they were not the like Directions as in November last, and whether the *Masters* did not think it impracticable to draw up an Account?

Mr. *Halford*. Yes, my Lord, they did, they thought it difficult; I thought it was not practicable without a great deal of Trouble.

Mr. Serj. Peng. I desire to know whether it was required by my Lord Chancellor to look into *Dunne's* Deficiency, to see what the true State of it was at that Time?

Mr. *Halford*. All I heard of it was: I heard that my Lord had ordered Mr. *Edwards* to deliver in an Account of Mr. *Dunne's* Office to my Lord and Mr. *Bromley*. He did deliver one; but it was an Account drawn in haste, and did not show what the Deficiency was. For some of the *Barreners* had to be made, and proper Vouchers were produced; there were mistakes, and it was not a proper Account, and without examining it we could not depend on it.

Mr. Serj. Peng. He mentions, in it at this meeting it was said, supposing the *Masters* might be continued on the same Foot they then stood, &c. I desire Mr. *Halford* may explain what he meant by the Foot they then stood on? what Liberties and Privileges are meant by that Expression?

Mr. *Halford*. I understood it was their continuing in the Possession of the Money.

Mr. Serj. Peng. Whether that was to lock the Money up in a Cabinet, or to have it out of the Money to make use of it?

Mr. *Halford*. For my own Part, I should not have locked it up.

Mr. Serj. Peng. I would beg leave to ask him, as he hath mentioned the said way in the Accounts, whether he delivered any Account to the Earl of *Manfield*, till the Order made by the Council?

Mr. *Halford*. My Lord, I did deliver an Account to my Lord *Manfield*, or to Mr. *Chancellor*, of my Money, but not of the accounts.

Mr. Serj. Peng. We desire Mr. *Edwards* may be called upon.

[*Accordingly* Mr. *Edwards* was called, and appeared.]

Mr. Serj. Peng. My Lord, we beg leave, that Mr. *Edwards* may give your Lordships an Account, (because he was immediately concerned in a Demand made upon this Office) what application was made to him for this Mrs. *Chubb's* money? and what Application he made to the Earl of *Manfield* about that Question?

Mr. *Edwards*. My Lord, there was an Order brought to my that was made by my Lord *Manfield*, for the Payment of 10000 to Mr. *Glynne*. I told the Party, I had no Money in my Hands of Mr. *Dunne's* sufficient to answer the Demand upon the Office. I then went to my Lord *Manfield*. I told him (I had been forced to trouble him very often upon that Occasion), that it gave me a great deal of Unpleasant that there was no Fund in my Hands to answer those Demands that were upon my Office. I hope your Lordships would take Care that there should be a supply, or that he would not be pleased to make Orders upon me for the Payment of Money.

Mr. Serj. Peng. Give an Account of the whole that passed, the whole Conversation.

Mr. *Edwards*. My Lord *Manfield*, in answer to that said (as I said, it was what I understood by his Answer), that if the People would but have a little Patience, he was doing every thing necessary, and making proper Regulations for that Purpose.

Mr. Serj. Peng. I desire he may be asked, whether my Lord *Manfield*, at the time he was ordered him to proceed to make any further Payments, or encouraged him to go on to make Payments?

Mr. Serj. Peng. My Lord, we apprehend that this is too leading a Question.

Mr. Serj. Peng. What Directions he had, in general?

Mr. *Edwards*. My Lord, I had no Directions that I remember.

Mr. Serj. Peng. I desire he may acquaint your Lordships, whether he filed any thing relating to the State and Condition of the Sutors of the Court?

Mr. *Edwards*. Several times that I had the Honour to wait on my Lord *Manfield*, I told him there was like to be a great Deficiency in Mr. *Dunne's* Office: All that had been called out of *Dunne's* Office was exhausted and gone, and there were a great many Demands; and I hoped Provision would be made to answer them: It was not for me to do it, and I hoped it was not expected that I should.

Mr. Serj. Peng. Was any thing repeated at that time, concerning paying for the Sutors of the Court, and not others?

Mr. *Edwards*. About that time, or rather since, as I remember, I told my Lord *Manfield* that I saw the *Masters* were determined not to make any further Contribution, and that if that were to be the Case, and that there was to be no further Supply of Money, it would be very hard for some to have



all their Money, and others none at all. My Lord Chancellor said, I do not know what to say to it, I think it is very hard it should be so, I will take all the Case I can, and hope to make every Body easy.

Mr. Lee. My Lords, I desire he may be asked, whether he had not paid all the Money, or recall, when this Deficiency happened?

Mr. Edwards. Yes, my Lords.

Mr. Lee. I desire he may be asked, whether he was present at the meeting of the Masters, when this Deficiency was made, and on what Occasion it was?

Mr. Edwards. It was upon a Summons that all the Masters should attend his Lordship; I am not sure as to the Day; I think it was the latter End of July: We waited upon his Lordship about five of the Clock in the Evening, and my Lord mentioned it to Mr. Lightbown, that he was surprised that he had not contributed his part, he wondered that he should be backward in doing what others thought right to do, and that there was Deficiency at this Time for the Payment of 1000*l*. he mentioned, either to Mr. Clancy at Mr. Lightbown's. Mr. Lightbown told him, that he did not expect to be asked again upon this subject, he had for some time had his Lordship he would not contribute, other People might do what they pleased, but, as for his Part, he was determined not to do it.

Mr. Lee. We desire to know what passed, and what was said by the Earl at this meeting?

Mr. Edwards. When this was related by Mr. Lightbown, there was a Discourse in the Company, that if the rest of the Masters would advance 50*l*. a-piece, and Mr. Lightbown his 50*l*. it would make up the sum. The Masters, most of them, spoke their mind, and showed an Unwillingness to contribute any more. My Lord Macclesfield was pleased to say, this was a Question, of Consequence, a matter that ought to be considered; but, as a very good Occasion for a sum of money to be immediately paid, if not paid, I don't know what the Consequence may be: I cannot begin to guess pretty far, I don't know but it may occasion a parliamentary Enquiry, or to that effect.

Mr. Lee. I desire he may be asked, whether there was any further Discourse what the Parliament might do?

Mr. Edwards. My Lord Macclesfield was pleased to say further, I don't know, if the matter comes into the Consideration of Parliament, how far it may affect your Offices, the Sale of them is against an Act of Parliament: Suppose it should be resolved by the House, that these Places, being bought out by the Act of Parliament, are forfeited, I can't say how far it may affect us in this manner, but it will affect you much more.

Mr. Serj. Pigg. These are the very Words of the Article, and we may rely upon the Opinion of the Earl himself, when he was in the Possession of that great Office.

Earl of Macclesfield. My Lords, I desire Mr. Edwards may be asked, whether the duty of 50*l*. of this Deficiency was the Payment of this 1000*l*. or making good the Whole of Dr. 1000*l*'s Deficiency?

Mr. Edwards. I understood the only Subject to be this 1000*l*.

E. of Macc. You understood it so?

Mr. Edwards. And the Reason why I understood it so was, because if Mr. Lightbown would have been pleased to have paid his 50*l*. and the other Masters 50*l*. a-piece, it would have made up the sum.

Earl of Macc. Was the Proposal of paying 50*l*. a-piece, after Mr. Lightbown had refused the Payment of 500*l*?

Mr. Edwards. I believe it was.

E. of Macc. What Occasion was there for the Proposal to pay 50*l*. a-piece, when the 500*l*. of 500*l*. was absolutely refused?

Mr. Edwards. I believe it was understood by several, that, if the other Masters would have contributed 50*l*. a-piece, it would have been an Inducement for Mr. Lightbown to have come in and paid his 500*l*.

E. of Macc. I have already said, I think that that had appeared. My Lord, I can't say who proposed it, nor whether it was proposed by my Lord Macclesfield, but 50*l*. a-piece was mentioned.

E. of Macc. My Lords, I desire to know of Mr. Edwards, whether the Masters did not at any Time agree to make good Dr. 1000*l*'s Deficiency?

Mr. Edwards. My Lords, I think I remember a meeting of the Masters at his Lordship's House not long before this, when they formed an Inconceivable error, that if they were concerned in the Rights of their Office and Respect, and as the same Foot as they had enjoyed them, that then they would have not returned to have made this Deficiency good.

E. of Macc. I desire to know if he hath not said, that he had earlier into the Office, the Masters told him, they would make good the Deficiency? Mr. Edwards. I can't say the Masters ever told me they would make good the Deficiency, I can't say I ever heard them say that they would make it up.

E. of Macc. I desire you would recollect yourself, whether, when you was with me, and I desired you to give an Account of this matter, you did not say, that the Masters did promise to make it good, or else you would not have come into the Chair?

Mr. Edwards. I don't remember I told your Lordship so; I believe it was suggested by the Masters to have it made up, if not the whole, at least the greater Part of the Masters, were inclinable to make up the Deficiency.

E. of Macc. I desire an Answer to the Question, whether he did not say, that the Masters did promise him to make good the Deficiency?

Mr. Edwards. I don't remember that I said so directly, I told your Lordship, that unless I had had Assurance that the Deficiency of the Office would have been made up, I never would have attended with it. These Assurance I had from Mr. Clancy and Mr. Gosling.

E. of Macc. I thank you say, the Masters did seem to agree, that if they were kept in Possession of the Rights of their Offices, they would contribute. Had you no conversation with me in July, or August?

Mr. Edwards. I think there were two in the latter month of July.

E. of Macc. Whether the Masters have not made several Complaints to me, of the Infringement of the Rights of their Offices, and desired me to make an Order to redress them?

Mr. Edwards. Not only Complaints of that Sort were made, but I believe those Complaints were reduced into Writing, and laid before your Lordship, there were frequent Complaints by Concurrence of all the Masters.

E. of Macc. How long before that Time were Complaints made to me of the Masters being injured in the Privileges of the Office?

Mr. Edwards. I believe near a Twelve month.

E. of Macc. Was it not more?

Mr. Edwards. It was a full Year.

[Earl of Macclesfield shows Mr. Edwards a Paper.]

Mr. Edwards. This is what I mentioned, a Representation in Writing laid before your Lordship.

E. of Macc. Pray look upon that.

[Shows another Paper, which Mr. Edwards looks upon.]

E. of Macc. Are those two Papers signed by you, and the other Masters, whose Names are at the End of them?—Mr. Edwards. Yes.

E. of Macc. I desire to know, in the next Place, whether I was not represented by the Master to have made some Alterations in the Proceedings of the Court?—And what Answer did I give?

Mr. Edwards. Upon this Representation, there were a great many Arguments made to my Lord Macclesfield, I would not say I was myself. Sometimes two or three would make Arguments as well, that they would be pleased, if he thought the matters upon and some Grievances, that they would redress them. My Lord did say, that he thought that the matter of our Complaint was just, and that those matters were proper to be redressed, and he would take all proper measures to do so.

E. of Macc. And why were all these Things set right?

Mr. Edwards. I remember our Grievances that I believe will be an Answer to the noble Lord's Question. Those matters were set right together all at once before my Lord Chancellor, but more at one Time, and others at another Time; and my Lord Macclesfield did say, I would have you draw up a State of all these Grievances, your complaint of, and then I shall be your better under our View, and take them together.

E. of Macc. Was there any Order made in Favour of the Masters, and to redress their Grievances?

Mr. Edwards. I remember we were a little impatient that there was no Order made; we often solicited on several Accounts before they were made.

E. of Macc. For what particular Reasons were you so impatient?

Mr. Edwards. It is impossible to recollect the particular Reasons; there were, in many Instances, relating to the Proceedings at the Bar, and the Inconvenience there to the Privilege of the Masters Offices.

Mr. Pigg. My Lord Macclesfield had asked me, and I would make an Observation upon this Evidence, that these Gentlemen applied to Lord Macclesfield to redress Grievances, but he would not promise to do so, but only said they had the Debt.

Sir George Osborn. I desire to know what he means by the Profits of the Office?

Mr. Edwards. The principal Thing that I mean is the keeping of the Money, but that, were several other Things in which we thought our Offices injured, by taking away the customary Fees which usually belonged to the Masters.

Sir Geo. Osborn. If the Profits of the Office was the keeping of the Money, I say of it, there made use of it?

Mr. Edwards. Yes, my Lords, I believe it was not understood by any Body, that the Money was to be locked up. By the Profits of the Office is meant the putting out the Money at Interest for ourselves. But that is not all, the placing the time out at Interest for the Suitors against several Petitioners, as Reports and other Things, which would be lost by taking away the Money.

[Mr. John Basset called again.]

Mr. Serj. Geo. My Lords, we desire Mr. John Basset may be asked, whether he was present at the meeting at the Lord Chancellor's, when Proposals were made for raising this sum?

Mr. Basset. My Lords, I was there, and my Lord Macclesfield was present in person; Mr. Lightbown is gone his 500*l*. Mr. Lightbown said he had made other things being in all the Money and Securities he had in his hands, and desired them up, than his 500*l*. Upon which my Lord Macclesfield said, desiring upon the Money and Securities was right in the Consequence, but that was not the will; there might be Votes of the House of Commons, that the Office of a Master in Chancery did concern the Execution of Justice, and that the Masters in Chancery, purchasing their Offices, had increased the Fee of the Statute of 8*th* Geo. 2*nd* the 10*th*, and thereby forfeited their Places, and that a new Statute might be put on it, it might be allowed to force Laws to his Lordship in discharging of their Offices, but it would redress much more to their Loss, the Loss of their Places.

Mr. Lee. When the Masters refused to contribute to this Charge, what did my Lord?

Mr. Basset. My Lord said, he would take care of it himself, or that he would pay it himself, I can't say which.

Mr. Lee. Whether any thing was said concerning the Consequence of not paying this 1000*l*. and whether any mention was made of Dr. 1000*l*'s Debt, any?

Mr. Basset. There was mention made of Mr. Drury's Deficiency, and one Mr. Blyth mentioned, that it was a notorious Fact, and as my Lord had desired me, and Mr. Hayford to take from Account of it, we both declared, we had not received such a satisfactory Account from Mr. Edwards as could be depended upon, and that the Deficiency appeared to us to be very uncertain.

Mr.







Mr. Serj. Popham. My Lords, we beg leave to call Mr. Leechman, to whom this 1000 l. was paid, and to show your Lordships the Declaration that was made by the Earl of Macclesfield at that Time.

Mr. Leechman. We beg Leave first to read the Order in the Cause of Harper and Cole.

[The Order is read.]

[Mr. Ralph Paston reads.]

*Sabbati quints Die Decembris, Anno Regni Georgij Regis octidecimo, inter Janam Harper viduam Quam Thomam Cole Clerici & Sora Maria uxore ejus, Henrici Halford, & alios Defensores.*

UPON opening of the Matter this prefere Day unto the Right Honourable the Lord High Chancellor of Great Britain, by Mr. Attorney General and Mr. Williams, being Counsel for the Plaintiff, and Mr. Benjamin Jackson, in the Presence of Mr. Taylor, of Counsel for the Defendants: The Cause. It was alleged, That a bond, by the Order made on the hearing of this Cause (now also) and decreed, That the Sum of 500 l. Pounds, Part of the Marital Portion of the Plaintiff, received by Thomas Harper, Clerk, her late Husband, should be made good to her with Interest from his Death, at the Rate of 5 l. per Cent per Annum, together with her Costs of this Suit, to be paid by Defendant, then one of the Masters of this Court, out of the said Thomas Harper's Estate (for which, and other Purposes in the said Order, in as much as should be necessary of the said Thomas Harper's Estate was to be paid to the said Plaintiff that could be got for the same, with the Appropriation of the said Master.) And the said Master, having, by his Report, (made pursuant to the said Order, and) dated the 12th of November, 1718, certified the Sum of 537 l. 6 s. 4 d. to be due to the Plaintiff for Principal and Interest, between Costs. And the said Defendants having been served with a Writ of Execution of the said Decree, the said Master, by his Report dated the 6th of November, 1717, allowed the said Thomas the Purchase of three Houses at Kensington (Part of the Premises directed to be sold) at the Sum of 2000 l. And the said Master's Report being afterwards absolutely confirmed, the said Jackson obtained an Order of the 12th of December, 1717, whereby it was ordered, That the Writings belonging to the said Estate, purchased by the said Jackson, should be delivered to the said Plaintiff, and that the Tenants of the said Estate should attend to him, on bringing his Purchase Money before the said Master. And the said Jackson did accordingly, on the 24th of the said December, bring his said Purchase Money before the said Master, as by his Certificate of that Date, now read, appears, and the Tenants attended to the said Jackson: But the Defendants have ever since, by trading Pretences and Evasions, put off the executing proper Conveyances to the said Jackson. Although the same have been long since settled and allowed by Mr. Edwards, one of the Masters of this Court, the said Mr. Dorman's Successor, as by the Affidavits of Joseph Horring and Thomas Arnold appears. It was therefore prayed, that all Parties may forthwith execute Conveyances of the said Houses to the said Mr. Jackson, or as he shall appoint; And it was on the Plaintiff's behalf prayed, that the said Purchase Money may be paid to her, towards the Satisfaction of what is due to her, by virtue of the said Decree: Whereas the Council for the Defendants had Cities alleged, that they are entitled to the Residue of the said *Vis' Harper's* Estate, after such Payments as are directed by the said Decree to be made out of the same, are made, and the Defendants Cole and his Wife were always ready to join in executing the said Conveyances, upon an Application being made of the said Jackson's Purchase Money towards what is due to the Plaintiff, but being apprehensive of a Discrepancy of Mr. Dorman's Estate to answer the Money brought before him, pursuant to the Orders of this Court; and concerning they ought not to be Sufferers, though such Discrepancy might appear, and the Delay being occasioned by the Purchaser, and not by the Plaintiff, and the said Master not having settled the said Conveyances, they did therefore tender to execute the said Conveyances, until the said Jackson's Purchase Money should be applied to the Purposes in the said Decree, but are willing, if the Court should think proper, on Payment of the said 2000 l. Purchase Money to the Plaintiff, and the said *Vis' Harper's* Estate being discharged of so much, to execute the said Conveyances. Whereupon, and upon hearing of the said Affidavits of the said Joseph Horring and Thomas Arnold, and an Affidavit of Notice to the Defendant Halford read, and what was alleged on both Sides, his Lordship doth order, that it be referred to the said Mr. Edwards, to examine, whether the said 2000 l. was deposited with the said Mr. Dorman for the Benefit of any particular Person, and whom, and what was the Occasion of the Delay, that the said Conveyances were not executed, and the said 2000 l. Purchase Money paid out before the Year 1720, and whether there is likely to be a Loss of any Money deposited with the said Mr. Dorman? And, upon the said Master's Report, such further Orders shall be made as shall be just.

Mr. Serj. Popham. My Lords, this Order was made in December last: It is a Direction to Mr. Edwards to see, whether there was like to be any Loss of any Money deposited with Mr. Dorman: We pray that Mr. Leechman may be sworn.

[Mr. Leechman swears.]

Mr. Serj. Popham. We beg Leave that Mr. Leechman may be asked, Whether he attended upon the Earl of Macclesfield at any Time relating to a Sum of Money, and where?

Mr. Leechman. I received an Order from the Earl of Macclesfield upon Mr. Edwards for 1000 l. but not being able to receive it of Mr. Edwards, I went to Kensington to wait upon the Earl of Macclesfield, and told his Lordship the Necessity I had for the 1000 l. which belonged to Mrs. Chapp, but the Benefit of it was made over to me, that I had the Misfortune to be backwards in my Affairs, and had some South-Sea Certificates to make up, and had made a Composition of my Debts, for which I had about three Weeks to pay it in, and therefore I desired the Favour of his Lordship to order me the Payment of this 1000 l. His Lordship was pleased to oblige me, that if I attended him in Town, and applied to him there, I should have the Money paid. Upon which I waited upon his

Lordship in Town: and when I had the Honour to see his Lordship, told me, That he had enquired into the Affair relating to that Money, which the Order was made, that it was in Mrs. Dorman's Gift, where there was a Discrepancy, that he could not yet bring all the Masters to settle Matters; but if I could come 20 or 25 Days after, he would let what he thought fit. Thereupon I attended several Days, and went to Kensington, and spoke to Mr. Cattergham, and he said great Points had been taken by Lord, but he had not yet been able to bring any Thing to bear, but he was not doubtful but in a little Time he could bring it to bear to his Satisfaction: had been from Morning made by Benjamin Glynne, who, which frightened the Masters from raising Money; but if I attended as a Days, he would do what he could for me. I waited some Days, but I took the Freedom to wait upon my Lord Macclesfield at his House in London's-Field, and I told his Lordship he attended as I did in Town, and had neglected my Duty and Service; that that Day was the last Day appointed to pay my Compositions, and having pointed upon this Money, I had made no other Provision. Where his Lordship said, he had taken a good deal of Pains, and had paid the Masters, and that I should attend his Lordship next Day at 10 o'clock at Ten, and he would see what he could do for me; but that the same was near of the Estate of Mr. Dorman left. I waited upon him accordingly the next Day at Kensington. His Lordship called me in his Room, and told me that Mr. Cattergham should pay me the 1000 l. he believed there would come no more, and that would be the last of the Money, or the last Sum that Mrs. Chapp would receive; and that if he was waiting still, I might, by marrying her, in Expectation of a Fortune, make myself worse than I was.

Mr. Dunnington. I desire Mr. Leechman may be asked, What the whole Sum was that was paid in?

Mr. Leech. I took it to be about 10000 l.

Mr. Serj. Popham. I desire he may be asked, If the Earl of Macclesfield gave any further Reason why it was like to be the last Sum?

Mr. Leech. The Earl of Macclesfield did not at that Time give me any Reason; but the Day before, when I attended the Honour of seeing his Lordship, at his House in London's-Field, and once before that, his Lordship told me that the Masters in Chancery were apprehensive of taking a great deal of their Privileges, and Prerogatives of their Places; and therefore, since that time were not willing to advance any Money.

Mr. Wylt. My Lords, I beg Leave to ask Mr. Leechman, whether he received any Direction or Intimation as to the keeping of this money, the telling, or not telling it?

Mr. Leech. I did receive no Intimation at that Time; afterwards, when the Solicitor met me, he said me, Pay, says he, Mr. Leechman, how you received the 1000 l. you followed for? Yes, I have received it. But, who then paid it to you? I told him Mr. Cattergham. Says he, Mr. Cattergham, how did it come? Upon that I met Mr. Cattergham some Time afterwards in the Court of Requests. He told me I should say nothing of it. Besides that, I received no Intimation to keep it secret.

Mr. Wylt. What did he say to you then?

Mr. Leech. He said at first meeting me, You can't sue well, but you must stay out Road-meat. I, being not well acquainted with that Phrase, did not know what he meant. I did not know that I had ever out Road-meat with him either, so I told him, if that was in relation to his paying me the 1000 l. it was only what was due, and I hoped there would be Cause for it to answer the Remainder. He answered, he could not tell what the Consequence would be, whether ever it would be made up, or not, he could not tell, he was very uncertain.

E. of Macclesfield. Sir, I desire to know of you, whether you did not represent yourself to me to be in the utmost Distress if this money was not paid to you, that in such Case you must be ruined?

Mr. Leech. I remember I told his Lordship, that this money I had borrowed of Mrs. Chapp, that I had settled a Composition with my Creditors, and wanted this money to satisfy them; that it must be paid the next Day; and if I did not then pay it, it would be a great Damage to me; I had promised his Lordship, and had depended upon his Lordship's Promise, and that was the Reason I pressed it the more.

E. of Macclesfield. I desire he may be asked, Whether I ever promised to pay him at any Time before that?

Mr. Leech. When I went to wait upon your Lordship at Kensington, your Lordship promised me it should be paid; that, as soon as you came in Town I should apply to your Lordship, and you would give Orders, and it should be done.

E. of Macclesfield. Whether he did not look upon it, that I did thus out of Compassion to him?

Mr. Leech. I took it as Part of a Sum of money due, and I did not look upon it as Charity, or out of Compassion.

E. of Macclesfield. I desire to know, Whether he did not intend it of me as an Act of Compassion to him?

Mr. Leech. I don't understand the English Terms, I did not use the Word Compassion, I begged that your Lordship would be so good as to order me the money.

E. of Macclesfield. I desire to know, Whether the first Time he applied to me I promised to pay the money?

Mr. Leech. Your Lordship promised the Order should be given to the Master, and that I should be paid.

E. of Macclesfield. When was that Promise?

Mr. Leech. When you promised to order the Master, and I should have the money.

E. of Macclesfield. How long before?

Mr. Leech. I can't very well remember; because the Solicitor waited several Times upon the Master, and the Master told him there was nothing. I went to the Master's House, and then to the Rolls, and there I saw him; and he told me there were no Affairs in his Hands of Mr. Dorman's.

E. of Macclesfield. I desire to know, Whether he did not desire a further Sum, when this 1000 l. was paid by Mr. Cattergham, and how much?

Mr. Leech. My Lord, I ask your Lordship's Pardon, I don't remember: I then asked any other Sum. When I saw your Lordship afterwards, I asked your Lordship, if it was not possible to have another 1000 l. You was pleased to tell me, there could be no more paid.



E. of *Msc.* Did not you solicit for a further Sum, till Mr. *Cottingham* told you?

Mr. *Lockman*. Mr. *Cottingham* was a little angry when I press'd him. I went out of Doors, Mr. *Cottingham* followed me. I stood in the Yard, Mr. *Cottingham* came out, and told me, he had an Order from my Lord Chancellor to call the Masters to a meeting, and see what could be done. I told him that was uncertain; how shall I do, if I have not this Money?

E. of *Msc.* I desire to know, whether he did not ask a further Sum of

£. of 570 l.

Mr. *Lock*. There was an Order, on a Letter of Attorney from Mrs. *Chay*, for that Sum. But never, after I was at your Lordship's House at *Knightsbridge*, did I ask if I could have a thousand Pounds more.

E. of *Msc.* When was that 5000 l. paid?

Mr. *Lock*. I don't know.

E. of *Msc.* I desire to know, whether, between the Time you say you presented the 1000 l. and the Time of paying it, you did not defer before the Sum of 574 l. advanced for Mrs. *Chay's* Use?

Mr. *Lock*. When your Lordship had told me that 1000 l. was all that could possibly be obtained, I made no further Solicitations.

E. of *Msc.* How long was it that you came to *Knightsbridge*, to ask me for that 1000 l. before the other 1000 l. was paid?

Mr. *Lock*. Three Weeks before.

E. of *Msc.* Then after that Time you never demanded any more?

Mr. *Lock*. After your Lordship had told me that was all that could be obtained, then I desisted from asking any more.

E. of *Msc.* And that was about three Weeks before the Time you received the Money?

Mr. *Lock*. I believe between a Fortnight and three Weeks, or thereabouts.

Mr. *Cox*. Sir, I desire he may be asked, whether he can be certain as to the Expedition, whether this was the last Money that was like to be paid, or that my Lord would pay?

Mr. *Lock*. It was, as I remember, in these Words: If the Lady hath no other Fortune than what is in *Chancery*, is the Master's Hand, this will be the last of it.

Mr. *Sil. Geo.* We desire Mr. *Arnold* may be called.

(Mr. *Arnold* sworn.)

Mr. *Serj. Pegg*. My Lords, we desire Mr. *Arnold* may be asked, whether he was in Court at the Time a Motion was made upon an Order in a Cause between *Harper* and *Gale*.

Mr. *Arnold*. My Lords, I was at the late Lord Chancellor's House, where, about the 5th of *December* last, the Motion was made. I was Solicitor for Mrs. *Harper* in the Cause. The Occasion of it was, There was an Estate decreed to be sold, and the Money was to be paid into the Master's Hands, who was Mr. *Durmer*. The Money was accordingly paid, and the Conveyances approved of by the Council, and a Fine agreed upon; but at last the Parties would not execute, unless the Money was paid them; objecting there would be a Deficiency in *Durmer's* Office.

Therefore my Lord said that they might not be obliged to execute the Conveyances, till the Money was applied and paid to the Plaintiff. My Lord Chancellor was pleased to declare thereon, that he had heard there would be a Deficiency of Mr. *Durmer's* Office, but it had never judicially come before him; and what Knowledge he had of it was only as publick news, and referred it to Mr. *Edwards* to examine, whether there was likely to be a Deficiency, or not. I was near two months before I could get this Order passed, and then the Impachment came on. The Register told me, he was afraid that Order would do some Mischief.

When I had got the Order, I was told by several People about the Town, that Mr. *Durmer's* Office was very defective; and that my Lord Chancellor had directed a Commission to be made with one *Wifley*, who was a Banker, and had directed Mr. *Hilcock* to compound for Half-a-Crown in the Pound, and that others had twenty Shillings. Lord Chancellor had directed an Enquiry to be made whether any Deficiency. I was advised to say in these Words. *By your Leave*, because I was told these, it was by reason of compounding that Debt with *Wifley*; but the Register would not let them stand.

Mr. *Serj. Pegg*. The making of the Order, in this Case, confirm the Evidence of Mr. *Arnold*, that his Lordship declared he had heard of it as otherwise than as publick News; because by this Order he directs Mr. *Edwards* to enquire, whether there was likely to be a Deficiency, or not, although it had been so well known to his Lordship some Years before.

Mr. *Serj. Pegg*. He says there are Words struck out of this Order, I desire to know, whether those Words were not added by himself to the Order?

Mr. *At*. Yes, they were added by me before it passed.

Mr. *Serj. Prok*. When?

Mr. *At*. After I had the Order from the Register.

Mr. *Serj. Pegg*. When was that?

Mr. *At*. It was near two months before I could get the Order passed.

E. of *Msc.* Had you the Order passed before the Impachment?

Mr. *At*. Yes, I believe I had.

E. of *Msc.* Had you it passed before this matter came into Parliament?

Mr. *At*. I don't particularly know; I believe it was before your Lordship was impeached.

E. of *Msc.* Whether was it after I had parted with the Seals?

Mr. *At*. I believe after.

E. of *Msc.* How long was it before you added those Words?

Mr. *At*. Two or three Days after I had got the Order.

E. of *Msc.* When was it at the Register struck out those Words?

Mr. *At*. I can't say, I believe it was before the Impachment. The other Side had said those Words before they yet the Register struck them out.

E. of *Msc.* Was it after I had called to be Chancellor?

Mr. *At*. I believe it was.

E. of *Msc.* Was any thing said, at that Time, of the Accedat of *Wifley's* Writing, and *Praker's* going off?

Vox. VI.

Mr. *At*. I do remember your Lordship said *Wifley* was become bankrupt, and that he had Money of Mr. *Durmer's*, and you said fetching of a Person that was sued by *Wifley*, and of a Recovery against him, and of an Action brought for an escape, and you concluded upon the Whole, that all you knew of the Matter was only as publick News. This was after you had given an Account of the matter of *Wifley* and of the Marshal.

Mr. *Serj.* I desire he may be asked, whether my Lord did not expect a Double, how this matter might come out?

Mr. *At*. I don't know what his Lordship was pleased to doubt of.

Mr. *Serj. Prok*. I desire Mr. *Arnold* should recollect himself, whether there was any Notice taken, how this might come out, when the Report of the Masters should be made?

Mr. *At*. I don't remember any thing tending to that.

Mr. *Cox*. Sir, Whether is not any Abundance of these Words, and when?

Mr. *At*. No, I took no Abundance of them, till I was summoned to attend the Committee.

Mr. *Cox*. Sir, I desire Mr. *Arnold* may give a Reason how he comes to forget facts, and remember a Form of Words?

Mr. *At*. I don't remember all the Facts that have been asked.

Mr. *Rabins*. Whether my Lord did not mention a particular Sum that was owing from *Wifley* to *Durmer*?

Mr. *At*. I believe my Lord did mention a Sum, and I believe it was 18000 l.

Mr. *Rabins*. Whether he did not mention that *Wifley* had brought an Action of Escape against the Marshal?

Mr. *At*. Yes, that *Wifley* had brought an Action of Escape against the Marshal.

Mr. *Rabins*. Whether he did not mention, that *Wifley* had recovered a Judgment against the Marshal?

Mr. *At*. Yes, that *Wifley* had recovered a Judgment.

Mr. *Rabins*. Whether there was any thing said of the Escape of *Praker*?

Mr. *At*. Yes, my Lord did mention, that there was an Action brought against the Marshal for that very Escape.

Mr. *Cox*. Sir, Whether my Lord, having mentioned these Particulars, he did not then thence infer, he could not then tell how matters might come out?

Mr. *At*. I do not remember any thing of that.

Mr. *Lunney*. My Lords, I shall only make one short Observation. The Lord *Mansfield* faith in his Answer, that he doth not believe that he had any Discourse with the Masters about the Payment of this 10000 l. I submit it to your Lordships, whether there are not four or five Witnesses to it? We have now done with the Southern Article.

Mr. *Serj. Geo.* We shall proceed to our Proofs on the Seventeenth Article. And it will be necessary to lay before your Lordships three or four Orders, for the Proof of this Article.

Mr. *Ralph Paines*, being called, appeared, and proved the several Orders following, which were then all read.

An Order, dated 18 January, 30 Georgii Regis.

Another, dated 8 March, 8 Georgii Regis.

Another, dated 5 July, 8 Georgii Regis.

Another, dated 22 December, 9 Georgii Regis.

*Testis decimo attulit Dn. Tannorius Anno Regni Dni Georgii Regis attulit, inter Tannoribus Tannor Insuper per Eliza Tannor Vidua proa Amici et alia Eliza Tannor Quia, Thomas Tannor Arm' et Petrus Wifley, Defensores.*

UPON opening of the matter, this present Day, unto this Court, by Mr. *Erasmus Glynne*, of Counsel with the Plaintiff *Tannoribus Tannor*, in the Presence of Mr. *Kentley*, of Counsel with the Plaintiff *Elizabeth Tannor*; and the Defendant *Wifley*, and Mr. *Harley*, of Counsel with the Defendant *Tannor*. The Counsel for the Plaintiff *Tannoribus Tannor* alleged, That *Tannoribus Tannor* deceased, Father of the Plaintiff *Tannoribus Tannor*, and Husband of the Plaintiff *Elizabeth*, by his Will, devised one Moiety of his Estate, which was wholly personal, after Payment of his Debts and Funerall Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Tannoribus Tannor*, when he should attain his Age of One-and-Twenty Years, together with the Produce thereof, and made the Defendants *Tannor* and *Wifley*, Executors in Trust for the said Plaintiff, who duly proved the said Will. That the Plaintiff having brought their Bill in this Court, to have an Account of the said Testator's Estate, for a maintenance for the Plaintiff *Tannoribus Tannor*, during his Infancy, and a Performance of the said Will; Upon the Hearing of this Cause, it was referred to Mr. *Durmer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Nineteen Parts, and the Plaintiff *Elizabeth's* Moiety was forthwith assigned to her, and the other Moiety was to be placed out at Interest, by the said Master, for the said Infant's Benefit. And the said Master was to assign a Maintenance for the said Plaintiff, for the Time past; and was also to consider what was proper to be allowed for his Maintenance for the future. That the said Master, having proceeded to take an Account of the said Testator's Estate, it appeared, that so much thereof was raised by the Sale of Bond and Stock, and bought before the Master, is amounted to Five Thousand Nine Hundred and Eighty-five Pounds, Three Shillings, and Four Pence; one Moiety whereof, after Payment of her Share of its Costs of this Suit, belongs to the Plaintiff *Elizabeth Tannor*, and has been accordingly paid to her; and the other Moiety belongs to the Plaintiff *Tannoribus Tannor*, and is now in the Hands of Mr. *Edwards*, one of the Masters of this Court, who succeeded the said Mr. *Durmer*, and to whom the Reference in this Cause hath been transferred. I bid the Plaintiff,

4 E

*Tannoribus*



*Jonathan Joss*, both now attained his Age of One-and-Twenty Years, as by ABSTRACT and Certificate appears, and is entitled to receive his Share of the said Money, after Deduction of his Share of the said Costs, and having contracted some considerable Debts for his Maintenance, and otherwise, during his Infancy, for which he is deemed to be answerable, in case the said Debts are not speedily paid. It was therefore prayed, that the said Master may, out of the Monies, in his Hands, pay to the Plaintiff, *Jonathan Joss*, the Sum of Four Hundred Pounds, which, upon reading the said Affidavit and Certificate, *Elizabeth Joss*, and the Defendant, *Wife*, who concurred thereto, and the Counsel for the Defendants, *Joss*, who did not oppose the Payment thereof, is ordered accordingly.

*Joss obavit Die Martis Anno Regni Dni Georgii Regis octavo, inter Jonathan Joss & Elizabeth Joss, Rxs, Thom Joss Anw & Petri Wife, Defensores.*

UPON opening of the Matter, this present Day, unto the Right Honourable the Lord High Chancellor of Great Britain, by Mr. Sergeant Cleghorn, being of Council for the Plaintiff, *Jonathan Joss*, in the Presence of Mr. Knolly, of Council for the Plaintiff *Elizabeth Joss*, and for the Defendant, *Wife*: It was alleged, that *Jonathan Joss*, deceased, Father of the Plaintiff *Jonathan Joss*, and Husband of the Plaintiff *Elizabeth Joss*, by his Will, devised one Moiety of his Estate (which was wholly personal) after Payment of his Debts and Funeral Expenses, to the Plaintiff *Elizabeth*, and the other Moiety to be forthwith assigned to her, when he should attain his Age of One-and-Twenty Years, together with the Produce thereof; and made the Defendants, *Joss* and *Wife*, Executors in Trust for the said Plaintiff; and the said Defendants duly proved the said Will. That the Plaintiff exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will. And upon the hearing of this Cause, it was referred to Mr. Dwyer, then one of the Masters of this Court, to take an Account of the said Testator's Estate, and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth's* Moiety was to be forthwith assigned to her; and the other Moiety was to be placed out at Interest by the said Master for the said Infant's Benefit. That the said Master having proceeded to take an Account of the said Testator's Estate, it appeared, that so much was raised by the Sale of the said Real and Personal Estate, and brought before the said Master, as amounted to Five Thousand Nine Hundred and Eighty-five Pounds, Three Shillings and Four-pence, one Moiety whereof, after Payment to the Plaintiff *Elizabeth Joss* of her Share of the Costs of this Suit, belonged to her, and had been accordingly paid to her; and the other Moiety belonging to the Plaintiff *Jonathan Joss*, and was in the Hands of Mr. Edwards, one of the Masters of this Court (who succeeded the said Mr. Dwyer). That the Plaintiff, *Jonathan Joss*, has attained the Age of One-and-Twenty Years, at by Certificate and Affidavit appears, and is entitled to receive his Moiety of the said Money, after Deduction of his Share of the said Costs: And he had contracted for a Poll in the Army, which, with his Equipage, will amount to Two Thousand Pounds, which he is advised will be very advantageous for him to purchase; and therefore it was prayed, that the said Master may pay to the Plaintiff, *Jonathan Joss*, out of the Money in his Hands, a Sum not exceeding Two Thousand Pounds, to be laid out in the Purchase of a Commission, and for other Purposes. Whereupon, and upon hearing of the Plaintiff, *Elizabeth Joss*, and Defendant *Wife's* Counsel, and hearing an Affidavit of Notice of this Motion to the Defendant *Joss* read, and who was alleged by the Counsel on both Sides: It is ordered, that the said Master do, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Joss*, the Sum of Two Thousand Pounds; the Plaintiff, *Elizabeth Joss*, and the Defendant *Wife*, having subscribed the Registrar's Book, signifying their Consent thereto.

*Joss obavit Die Julii Anno Regni Dni Georgii Regis octavo, inter Jonathan Joss & Elizabeth Joss, Rxs, Thom Joss Anw & Petri Wife, Defensores.*

UPON opening of the Matter this present Day, unto the Right Honourable the Lord High Chancellor of Great Britain, by Mr. Ser. Cleghorn, being of Council for the Plaintiff, it was alleged, that *Jonathan Joss* deceased, Father of the Plaintiff *Jonathan Joss*, and Husband of the Plaintiff *Elizabeth Joss*, by his Will devised one Moiety of his Estate (which was wholly personal) after Payment of his Debts and Funeral Expenses, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Joss*, when he should attain his Age of One-and-Twenty Years, together with the Produce thereof, and made the Defendants, *Joss* and *Wife*, Executors in Trust for the said Plaintiff; and the said Defendants duly proved the said Will. That the Plaintiff exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will; and upon the hearing of the Cause, it was referred to Mr. Dwyer, then one of the Masters of this Court, to take an Account of the said Testator's Estate, and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth's* Moiety was to be forthwith assigned to her; and the other Moiety was to be placed out at Interest by the said Master for the said Infant's Benefit. That the said Master having proceeded to take an Account of the said Testator's Estate, it appeared by several Certificates from the said Master, that so much thereof was raised by the Sale of the said Real and Personal Estate, and brought before him, as amounted to Five Thousand Nine Hundred and eighty-five Pounds, three Shillings and Fourpence; that one Moiety thereof, after Payment of the Plaintiff *Elizabeth Joss* of her Share of the Costs of this Suit, had been in pursuance of several Orders of this Court paid to her, and the other Moiety, which belonged to the Plaintiff *Jonathan Joss*, was paid over to Mr. Edwards, one of the Masters of this Court (who succeeded the said Mr. Dwyer). That the Plaintiff *Jonathan Joss*, having attained his

Age of One-and-Twenty Years, and being intitled to receive his Moiety of the said Money, after Deduction of his Share of the said Costs, and having contracted for a Poll in the Army, which, with his Equipage, will amount to two Thousand Pounds, he did, on the eighth Day of August last, apply to the Court for that Money, and it was then ordered, that the said Master should, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Joss*, the Sum of two Thousand Pounds, the Plaintiff *Elizabeth Joss*, and Defendant *Wife*, having subscribed the Registrar's Book, signifying their Consent thereto; that pursuant to the said Order, the said Master paid the said two Thousand Pounds, and thereupon returning to his Hands of the Plaintiff *Jonathan Joss* his Share of the said Money, and the Sum of his hundred and forty-two Pounds. That the said Plaintiff *Jonathan Joss*, having perfect Occasion for the said Money, he consulted a Lecturer of Attorney to the Plaintiff *Elizabeth Joss*, his Mother, dated the Five-and-Twentieth Day of May last, empowering her to receive all Monies due to him from the said Master, and the Interest thereon for the Purposes therein mentioned. It was therefore prayed, that the said Master may pay to the said Plaintiff, *Elizabeth Joss*, the Remainder of the Money which is in his Hands, belonging to the Plaintiff *Jonathan's* Share, pursuant to the Letter of Attorney executed for that Purpose, which, upon hearing of Mr. Hargrave, Counsel for the Defendant *Joss*, and that which was said on both Sides, his Lordship is reasonable, and each under the same accordingly.

*Salvis obavit secundo Die Decembris Anno Regni Dni Georgii Regis octavo, inter Prædictæ Salton Cleghorn & Anw User ejus Merce & a Spiritus & Regius Lawrence gen' Anst Wynford Salton Spiritus Defensu Rxs, Elizabeth Chibby & Josses Regis & a per Billu ad revocatu & Supplementu Defensu.*

WHEREAS the Defendant *Elizabeth Chibby*, on the 11th of this instant December, preferred her Petition to the Right Honourable the Lord High Chancellor of Great Britain, shewing, that the Plaintiff and *Wynford Salton*, since deceased, having executed their Will for an Account of the Estate of *John Salton*, deceased, in the Exchequer, and to have that said Account and Fractions thereof, pursuant to the said Will. It was on the hearing of this Cause, the Eight-and-Twentieth of May, One thousand seven Hundred and Ninety, declared, that the Defendant, *Elizabeth Chibby*, was intitled to one Third of the said Estate, under the Will of the said Testator *Salton*, her second Husband, in her own Right, and to a Moiety of the other two Thirds in Right of, or as surviving the Children she had by the said *Salton*, who were dead, and that the other Moiety of the said two Thirds belonged to the Plaintiff, or those whom they represented and decreed the same, after full Allowance to be paid and distributed accordingly; and Sir Robert Knightley, Bart. since dead, having by his Answer admitted to have in his Hands Ten Thousand Four Hundred and Seventy Pounds three Shillings and Sixpence, Part of the Testator's Estate: It was ordered, that he should carry Ten Thousand Pounds thereof before Mr. Dwyer, then one of the Masters, to be by him placed out at Interest on Government, or such other Security as he should approve of for the Benefit of the Parties to whom the said should belong. In pursuance whereof the said *Robert Knightley* carried the said Ten Thousand Pounds before the said Master, who placed the same out at Interest, and on the Nine-and-Twentieth of July, One thousand seven Hundred and Ninety, the said Ten Thousand Pounds, with the Interest, which had been received by the said Master, amounting to Eleven Thousand three Hundred and Fifty-nine Pounds seven Shillings and Three-pence, the said Master, by his Report, certified, that he had placed Eleven Thousand three Hundred Pounds, Part thereof, out on the Land-Tax, for the Year One thousand seven Hundred and Ninety, at four Pounds per Cent. and that the Nine and Fifty Pounds Seven Shillings and Three-pence remained in his Hands; that on the third of August, One thousand seven Hundred and Twenty, the Plaintiff, by Petition, applied to his Lordship. That the Master might pay them some Money to carry on this Cause, and for their other Occasions; upon hearing whereof they were ordered Six Hundred Pounds out of the Money in the Master's Hands, which they have received accordingly. That the Defendant *Elizabeth Chibby* had, ever since the Death of her late Husband *John Chibby*, wanted Money, not only to defend the said Cause, but also for her Support, and other necessary Occasions, and that neither she, nor her late Husband, had received any Part of the Principal or Interest before the Master, nor any other Part of the Testator's Estate, except some Jewels, which were delivered up by the Trustees of the Testator's Will in *John* to her and her late Husband, which, or the greater Part thereof, she claimed as her Paraphernalia; but that she had no Benefit or Advantage thereof, her Husband having sold and disposed of them in his Life-time. Therefore, and for that the King as Head of Mr. Edwards, one of the Masters of this Court, who succeeded the said Mr. Dwyer in his Office, were unanimously moved by his Interest which had been created by him, and for that the said Mrs. Chibby was, in several, entitled to two Thirds of the said Testator's Estate, except what should be decreed thereto to her Children by her first Husband, who were entitled to one Moiety of their Father's Estate, which was possessed by the said *Robert Salton*, and for that she was obliged to maintain them, it was prayed, that the said Mr. Edwards might, out of the Money in his Hands, and which should be paid as upon the coming in of any of the Securities taken for the same, pay upon the Defendant *Chibby*, such Sum of Money as his Lordship should think fit, to enable her to carry on the said Cause, and for her immediate Support, and other Occasions. Whereupon all Parties were ordered to attend his Lordship on the then next Day of Petition. And whereas the said Plaintiff, on the 11th Day of this instant December, also preferred their Petition to his Lordship, shewing, inter alia, That they write, that their great Occasion for money, forced to apply the greater part of the money offered them to defend, towards their Support; and that the said Cause had been long depending, and very expensive, and was likely to undergo great Travels before the said Master, before the said Account could be taken, so that



they had great Occasion for more money, not only to carry on the said Cause, but also for their Support, and other necessary Occasions; and therefore praying that the said Master might allow out of the monies in his Hands, and which should be paid in, upon coming in of any of the Securities taken for the same, pay unto the Plaintiffs, or their Solicitors, such Sums of money as his Lordship should think fit, to enable them to carry on the said Cause, and for their immediate Support and other Occasions; and the matter of the said Petition being offered to come on with the Defendant Chyn's Pleasure, and Counsel on both Sides this Day attending accordingly. Whereupon, and upon hearing both the said Petitions read, and what was alleged by the Counsel on both Sides, his Lordship said, and ordered, That the said Mr. Edwards do, out of the money in his Hands, pay unto the Defendant, Mrs. Chyn, the Sum of Six Hundred Pounds, and also unto the Plaintiffs One Hundred Pounds a-piece; a bill being now alleged, that John Wynn, Esq. having exhibited his Bill against the said John Laurence, for Payment of a Legacy of Two Hundred Pounds, bequeathed to him by the Will of the said Wynn's Brother: It was on the hearing the said Cause, the first Day of December, One Thousand Seven Hundred and Twenty-one, decreed, That the said Mr. Wynn should be paid the said Legacy and Interest, together with the Costs of said Suit, out of the Assets of the said Ralph Wynn. It is further ordered, that the said Master, do, out of the Money in his Hands, pay the Plaintiffs, Laurence, the further Sum of Three Hundred Pounds, so enable him to satisfy the said Decree.

Mr. Laurence. Pray, Bew Mr. Edwards this Order.

[The Order given to Mr. Edwards.]

Mr. Laurence. My Lords, we desire that Mr. Edwards may be allowed, whether he hath paid any money in that Cause?

Mr. Edwards. Here are two Causes, which is it you mean, that of You and You?

Mr. Laurence. Yes, that of You and You.

Mr. Edwards. The money ordered, by those several Orders, hath been paid by me.

Mr. Laurence. I desire to know, whether Mr. Edwards can inform your Lordships, whether it is the whole money, or but in part?

Mr. Edwards. It is the whole money in the Cause.

Mr. Laurence. I desire he may be allowed, whether the money was paid out of Mr. Darnley's Effects, or out of his own?

Mr. Edwards. Out of Mr. Darnley's Effects, E. of Mordaunt. My Lords, Mr. Edwards is a little mistaken, principally the Orders in it are those Orders in one Cause, and one in another; I desire to know, whether in both Causes the whole money was paid out?

Mr. Edwards. In that between You and You, the whole money was paid out; in the other, between You and You, the whole was not paid, but only Part.

Mr. Laurence. Pray, we beg leave to ask Mr. Edwards, whether he did not pay the whole that was ordered by those several Orders?

Mr. Edwards. Yes, my Lords.

Mr. Laurence. Mr. Edwards did tell your Lordships before, that all the money, arising by Mr. Darnley's Effects, was paid out and paid.

Mr. Laurence. Pray, My Lords, we have gone through these three Articles as have been offered, and we shall call no more Proof to them.

[The House adjourned to Monday next at Ten o'Clock in the Forenoon.]

## THE FOURTH DAY.

MONDAY, May 10.

The Lords being seated in their House, and the Messengers being come, and the Earl sitting on a Stool, as before, and his Counsel and Solicitors at the Bar, the Sergeant at Arms made Proclamation for Silence, as also another Proclamation, That all Persons concerned were to take notice, that Thomas Earl of Mordaunt should now stand upon his Trial, and they might come forth in order to make good the Charge.

L. Ch. Just. King. Gentlemen of the House of Commons, you may proceed.

Mr. Plunket. My Lords, I am commanded by the Commons, to assist in maintaining their impeachment against Thomas Earl of Mordaunt, and when I consider how necessary it is for the Honour of his Majesty's Government, that an impartial Examination should be made into the Behaviour of this Earl, while he enjoyed the High Office of Chancellor; I am persuaded, that every good Subject must with Pleasure observe in such Manner this Prosecution is carried on; it must be a Satisfaction to me, to see the Commons placing a Confidence in your Lordships Justice, and proceeding in the Legal Parliamentary method by Impeachment, and your Lordships meeting that Confidence, by laying aside all private Considerations, and making the Prosecution predicable and just. A harmony between the two Houses of Parliament always to be wished for, and which alone can bring Impeachments to a happy issue, and deter great Offenders from opposing their Fellow Subjects.

My Lords, In former Reigns, Prosecutions of this kind have met with more Obstructions, and the Crown has often interposed its Authority to free a Favourite Minister; but his Majesty, who has no other View but the Welfare and Happiness of his People, and who is always attentive to their Interests, was the first who took notice that the Earl of Mordaunt had abused the Trust and Confidence reposed in him. And who can (without the deepest Sense of Gratitude) consider the Conduct of his Majesty in this Affair, who immediately disaffected him his Service, and left him to the Justice of an injured Nation? And the Earl of Mordaunt himself will have this Advantage by it, that his Name will be delivered unto Posterity, as a monument of his Majesty's paternal Goodness to his People. The immense Liberality, the great Honours, the high Dignities conferred on him by his Majesty, will be so many marks of his

Royal Munificence to the Earl, while he appeared to be his Worthy and Faithful Servant. And Posterity will with one Veneration observe, that neither the most Favour, the smallest Access to his sacred Person, nor any forwardness towards Himself, and his Royal Family, could, in his Majesty's House, under the High Office of the Crown from Justice, who, pursuing on those Advantages, would venture to oppress his Majesty's loyal and faithful People.

My Lords, The particular Justice assigned me in this Prosecution, is to make good the other Article, wherein I shall have the Assistance of a Gentleman, who will amply supply all the Defects or Omissions I shall be guilty of.

As this Article has been read by your Lordships Clerk, I shall not mispend your Time in a needless Repetition of it, but will observe, that the Substance of the Charge contained in it, is a wilful Neglect of the Kings Trust reposed in the Earl of Mordaunt, as Chancellor, That he did not restrain the Matters of the High Court of Chancery, from trafficking with the Sutors money and Effects, but did permit and encourage that Practice, tho' he was advised to put a stop to it, and fully advised of the Damages, which were thereby to ensue, and which have since actually ensued, to the great Loss and Injury of the Sutors of the said Court.

My Lords, As this wilful Neglect is highly criminal in itself, it is greatly aggravated by the unjust and corrupt Counsel, who induced him to be guilty of it, and the pernicious Confessions which have since been attended it, and, my Lords, since you have heard the Evidence that has been given on the former Articles, or the exorbitant Sums of money which he exacted for the Disposal of the Offices of Masters in Chancery, even after Darnley's Failure, we don't doubt but your Lordships are convinced, that he left the Masters that unanswerable, unlimited power over the Effects of the Sutors of the Court, with so other View, but as a bait and incitement to others to purchase their Offices (when Vacancies should happen) at the same, or greater Prices.

As I have stated the Charge contained in this Article, in as clear a manner as I am able; I beg leave, my Lords, to make some Observations on the Earl's Answer. He begins with an absolute Denial of not knowing how the Masters kept on a disposal of the money and Effects belonging to the Sutors of the Court. This Answer, my Lords, was Surprize to the Commons, as well because such an Ignorance would have been criminal in the Person, who ordered such prodigious Sums of money into their Hands, as who should be supposed to have had some Care of the Sutors; so also, because We have the clearest Proofs in legible, that he did know it, as it has already been proved by the Examination of several of the Masters before your Lordships. But what Warrant can we have of Proofs? when the Earl of Mordaunt himself in his former Answer to this Article confessed it, in saying, That after Mr. Darnley's misfortune, he thought of several Methods, and several Proposals to make to him by Persons he consulted on that Occasion, to prevent any Incumbrance on the like Account, for the future. Pray let us consider, What was Mr. Darnley's Misfortune? What was his Accident? Why, truly, Mr. Darnley had trafficked with the Sutors Money and Effects, and had left that Trade to prevent such Incumbrance for the future. My Lords, here is one of them. Inconceivably the Commons take Notice of in their Reply, and on which (as about any further Proofs) they might safely demand your Lordships Judgment.

But to consider his Answer farther, he says, he believes it will not be held criminal in him, not to have established any of the Proposals that were made to him by the Persons he consulted on that Occasion: Some Things were proposed that he thought impracticable, some unseasonable, and some inconsistent with that complex Regulation he hoped to make. The Objects he proposed to himself were, to make good Mr. Darnley's Debt, to secure the Sutors from any future Loss, and to make several Regulations relating to the Office of the Masters. And he thought these would be well done together; nor had he perceived the absurdity of any of them to his own Satisfaction.

My Lords, I am unwilling to make any Observations on this Part of his Answer, it is in itself so gross, I am afraid, if I seek it in Pieces, I should appear ludicrous, which I shall take great Care to avoid on so solemn an Occasion.

But I appeal to your Lordships, if a Person was to read this Answer, who was not acquainted with the Terms of these Occurrences, whether he could not see into that the Earl of Mordaunt had quoted the Great Seal within forty five short Time after Mr. Darnley's Failure? whereas it has appeared to your Lordships, that Mr. Darnley went away from that Office in the Year 1720. and that the Earl of Mordaunt continued Chancellor till January last, which is more than ten Years after; during all which Time (by his own Confession) he knew the Affairs of the Masters of the Court of Chancery to have been in great disorder, and to have wanted several Regulations: But, because he could not think of a Scheme perfectly so his mind to answer all his Design, he therefore has done nothing. This Answer must be left to your Lordships Judgment, but I am afraid, my Lords, the letting the Masters go on, without any Check, was the Scheme he stood by his Satisfaction, and must effectually show the ends he really proposed to himself, which were the making an exorbitant Gain by the Sale of their Offices, which must have fallen in their Price, if a Stop had been put to their trading with the Sutors money.

My Lords, he further answers, That he remembers no Proposal that he thought would take it totally out of the Power of the Masters to dispose of the Securities or Effects, or effectually secure the Cash. I can't omit taking Notice of the wording this Paragraph, and I believe your Lordships will agree with me, that the Words are thought, possibly, and respectively, are thrown in as great Cannon. My Lords, We think we can prove to You, that a Proposal was made to him, that would have taken it out of the Power of the Masters to dispose of the Securities and Effects, and would have secured, in great measure, the Cash; and this Evidence the Earl of Mordaunt must be all aware of, for he has it in his Hands as well as I, and I tacitly the Strength of his Defence, in this Point, lies in the Cause of Mr. Arrows: But, my Lords, if any Proposal was made to him, which would have cured the greatest Part of the evils the Court laboured under, I am sure your Lordships



Lordships will hold it criminal in him not to have made use of it, and the rather, because he furnished no other in its room.

My Lords, he admits he took no Security of the Masters, and says, he was never asked to do so. My Lords, we will prove that he was asked to do so, and that asking Security was Part of the Proposal I have mentioned. In this Place he takes notice of his Predecessors, who (as he says) were wiser Men than himself, and who took no Security of the Masters. My Lords, we don't accuse his Predecessors, nor are we obliged to justify them; but if I may be permitted to give my own private Opinion, it is, that if such Misfortunes had happened in his Predecessor's Days, and such Application had been made to them, they were to wit, they would have applied a proper Remedy: His not doing so, under these Circumstances, We look on as a plain Perjury, and strong Encouragement to the Masters to traffick with, and employ the Suitors Money for their own Gain and Profit. And it still appears to be a stronger Light, when your Lordships are acquainted that *Mr. Lightbourn*, who is himself a Master in Chancery, was the Person who made the Proposal, and who made (by my Lord's not using it) plainly see, that my Lord was refused to lay no Restraint on them, which might have tempted Mr. Lightbourn himself to have made an ill Use of this Power: But as he professed to my Lord Chancellor his Abhorrence of the Masters abusing their Trust, by alienating the Suits Money, and desired my Lord to get a Stop to that Practice, so it appeared by his Accounts given in before the Judges, that he had appropriated the specific Securities of the Suits to every particular Cause. And, my Lords, we look on it as a great Aggravation of the Crimes contained in this Article, which I have now gone through, that my Lord Macclesfield should continue to act with such astute, low Views, as were unbecoming a Master in Chancery, who had the Assistance of a Master, who behaved himself with a Prudence, Integrity, and Rectitude, which would have been becoming the Lord Chancellor.

Mr. Cury. My Lords, it is my Province to assist the Gentlemen that spoke before me, in supporting the Charge of the Commission in the 18th Article, which he has open'd with so great Force and Particularity, that it is unnecessary for me to give your Lordships more Trouble upon it, than by making an Observation or two on the most material Parts. The Beginning of this Article sets forth, that the Earl of Macclesfield very well knew, *as was inform'd that the Masters did, or that it was in their Power to dispose of, and employ the Suits Money and Efforts.* To which he is pleased gravely to answer, "That he never knew how the Masters kept, or disposed of the Money and Efforts belonging to the Suits of the Court." The contrary of this will be abundantly proved, in the Manner the Gentlemen have already found it.

But were it not, my Lords, in Issue in Proof, the Guilt to me appears self-evident, "as much the same whether he knew it, or knew it not; his Lordship may take the Alternative. What I did, he, Lord Chancellor, supreme Director of the Court, the great Trustee of England (who receiv'd the Money into the Master's Hands, who order'd it out of their Hands), did he know nothing of their Deficiency? And if he was, my Lords, is that Ignorance an Excuse or Aggravation? But we shall prove to your Lordships, that he not only was told of this Trafficking with the Suits Money, but was seconded the Consequence of it, the Danger of future Losses was pointed out to him, and Proposals for preventing 'em were given him in Writing.

And who was it, my Lords, that made these Proposals? Who gave him this Warning? One of the Masters of the Court, one intended in the Traffick of the Suits Money, a Gamester at the first Table with the impeached Earl. Advice from such a Hand must be sincere and unsuspicious, nothing but Justice, or a strong Apprehension of those constant Dangers, could have exhort'd it, nothing but the blindest Avarice could have prevented the Compliance with it. But when still remains could have prevented the Compliance with it, that the impeached Lord had not the Advantage of a single Proposal only, and from a single Master; but of several Proposals, and from several of 'em. Mr. Kingdome will inform your Lordships, that he and other Masters waited on the Lord Chancellor, and proposed to give Security in Land, or Money, for their Cash, and to make their Trust safe by putting the Securities in two Masters Names, or to the Name of the Parties and one of the Masters; with which he then appeared pleased, that he afterwards did nothing in it, and express'd his Dislike of the Proposal. Yet, my Lords, the Proposal was too reasonable to be refused, and too depending to be followed. So far was the unfortunate Lord from following it, or acting in any manner consistent with it, that soon after the Failure of Mr. Dummer, after their Proposals were made to him, he kills the Officers of several Masters at most exorbitant Prices. And this was what my noble Lord sets forth in his Answer, as one of the Expedients he thought of, after Dummer's Misfortune, for preventing any Inconvenience, in the like Accident, for the future? Was this the only Method of Cure the noble Earl brought to such Perfection, as so constant to put it in practice?

My Lords, the Gentlemen, embark'd in the same Bottom with this unhappy Earl, saw the Ship sinking, and proposed throwing over-board Part of their unsupportable Gains to prevent their general Wreck; but the impeached Earl does not only boldly rise on the same course, but takes in Loading, more Weight of Guilt, if not in defiance of the Danger, certainly in the neglect of it.

And how, my Lords, does his Answer excuse this Conduct? He admits that several Proposals were made on that Occasion; but says he thought impracticable, *some insufficient, some unsuitable with that complete Regulation he had in mind.* And because these were insufficient, some inconsistent, and not answering the full Idea of Perfection proposed by his Lordship, he thought nothing was attempted? Must we have no Relief, because we despair of an absolute Cure? Must no Remedy be applied to a dying Person, because it is not certain it will restore him to his perfect Strength? This far, indeed, is certain, it is much better to do nothing, than to continue in such Methods as first brought the Distemper upon him. We must therefore leave it with your Lordships to judge, whether the Inconsistency of the Proposals, with the Earl's private Views, was not the

true Reason of their being thought impracticable and insufficient? And what these Views really were, the whole Tenor of our Evidence has, and will shew: Views beneath the Dignity of his high Office, and far below a Member of this august Assembly.

My Lords, the Commission further charge this unhappy Earl, that he not only knew, but *employ'd* it, and *employ'd* it, this *dispositive* T-Force: And in Answer to this he says, "That he gave no Permission nor Encouragement to the Masters of the Court, to employ or traffick with the Suits Money." We have shew'd your Lordships he knew it, and knew it in the most affecting Manner, by the Run it had produced. We need not show you that he had Power to prevent it. And finally, my Lords, to know it, and not prevent it, in his Situation, was to permit it. And his not preventing it was a Permission, for his Example was an Encouragement. And when the Masters first him (the greatest Object in the Chancery Office); sure, they must think that Example (join'd to the Secretary's Example) laid them under the exorbitant Prices he exacted; a sufficient Encouragement to authorize them in the like Practices in future. The Examples of great Men, my Lords, are Encouragements; and the Assembly I for before me is an illustrious Proof they ought to be followed, will do Honour to those who follow them: And from the Influence of Examples here, and ought to have on the rest of Mankind, it has been supposed, that the only Passage to Honour was through the Temple of Virtue; but, my Lords, though that be but one Passage to it, there are many from it, and so many are the Facilities of human Nature, that the Building would be imperfect, without a Back-door to let out what is false or pollutes it: A Door, my Lords, your Ancestors have opened to former Lord Chancellors.

But we shall call our Evidence, and submit the whole, with the great self-Security and Satisfaction, to your Lordships Judgment.

Mr. Pinner. I desire Mr. Lightbourn may be called.

(Mr. Lightbourn being call'd, appear'd.)

Mr. Pinner. I desire Mr. Lightbourn may inform your Lordships whether he had any Discourse with my Lord Chancellor, about putting the Officers of Masters of Chancery into a better Regulation?

Mr. Lightbourn. My Lords, in order to answer this Question, it will be necessary for me to repeat some Part of the Accounts I gave when I was last at your Lordships Bar. I then acquainted your Lordships, in the Beginning of the Summer, in the Year 1732, the Lord Macclesfield having directed me to attend him, told me that he had known I had not contributed my good L towards making up Mr. Dummer's Deficiency, as the other Masters had done; that he did not expect I would have stood out, and was sorry to hear of it, as he had a more particular Regard to my Conduct than any of the rest, because I was the only Master of his immediate Choice; and on his Lordship's telling me that it was first proposed by the Masters, and not by his Lordship, I told him I was not willing to comply with it, and thought it a dangerous Expedient, that it might be hereafter looked upon as an Undertaking one for another, and therefore I would not consent to it, and that as this Accident had happened to Mr. Dummer, the like might happen again to others, and might be the Ruin of us all, if such a Constitution were put upon it. My Lord was pleas'd to say, it was the only Expedient he could think of for mending good the Deficiency. I told him I had as much at heart the doing of that as any body; and that if a proper Expedient could be found out to pay Mr. Dummer's Deficiency, and prevent the like Accident among us for the future, for putting the Officers on such a Foot, that the Masters might execute them with Honour to the Court and themselves, and with Safety to the Suits, I should be glad to contribute to such Reparations. His Lordship said, he should be glad if any such Thing could be thought of; and asked me, if I could think of any Method by which that might be done. I told him I believed I had; and that he call'd that *substitution*, and we having then discussed, but Lordship desired I would sit down. He then asked me, in what Manner it was that I proposed the Suits should be made safe: I told his Lordship that I apprehended it was impossible, in respect that the Masters could give a Security adequate to such a Trust, that there were many Instances of great Officers, whose Trust was so great as to be above giving simple Security, particularly the Treasurers of the Exchequer, and the Treasurers of the East-Sea and East-India Companies; but if a competent Security were taken, and such I apprehended might be given, I hoped it would answer the intent, and give Satisfaction, for simple Security for so great a Trust could not be expected. I then told his Lordship, that if the Treasurers of the East-India Company were confident, they would be found not only to proceed from squandering or misapplication of the Cash, but from Power over the Securities in his Hands, for that the Money could not be so much, but the Securities amounted to a greater Sum. He said it might be so; but how to prevent it he would be glad to know. I told his Lordship, that if the Securities for the future, were to be taken in the Names of the Master, and one or more of the Parties, the Suits would be safe. It was then observed, but whether by my Lord, or me, I do not remember, that an Objection might arise to this Method, that either the Master or the Party should give the Trust would arrive, and thereby either the Court lose its Power over the Security, or the Master's free Power over it be removed; but, to prevent that, I proposed that they might be taken, in the Name of two or three, or more of the Masters, with or without the Parties interested, as the Court should think proper; and that it was hardly to be imagin'd that all the Masters would betray their Trust, and risk their Fortunes to oblige any one, by suffering him to traffick with the Securities of the Court, taken in their joint Names, especially if Care was taken, that such Master as was to be joined, or a Clerk upon another Master, should have a Third to be a Check upon him. My Lord Macclesfield objected, That there was a great Number of such Masters and such Bonds, and other Securities, payable to the Bearer, that could not be in the Names of any particular Persons, and so could not be secured in that manner; and that it would be troublesome to lock them up. To which I replied, I knew no Question for putting out Money on such-Security or such Bonds, or such Securities, since there were other Securities sufficient







*Mr. Light.* I am, my Lords, I cannot do that, I believe it was at a meeting of several of the Masters, at my Lord's House. I often had the Honour to be admitted to him, with or without other Masters. His Doors and Bar were always open to me, and I was often troublesome to his Lordship. But I cannot recollect the Time, when this was first mentioned.

*Mr. Pinner.* I think he says the Masters might have different Views, as to how he would explain himself, what he means by that.

*Mr. Light.* I meant by that, that my Lord in mind of what I had said, when I had the Honour to be with him last, when his Lordship told me, that the Proposal of a Contribution came from the two senior Masters; I then said that their Design was only to fill over the Wound, till they could get out. That use of these had Bupp'd his Neck out of the Collar already, and another was about getting out. I told his Lordship, then, as I was but lately come into the Office, I proposed to spend my Days, or wear myself out in the service of the Court. Therefore, that these Design was to get out, and mine to continue in, was what I meant by different Views.

*Mr. Pinner.* Mr. Lightman hath given your Lordships an Account of his Proposals and Arguments used with my Lord Chancellor; I desire to know, whether he used any other Instruments to persuade my Lord to make those Orders relating to the Masters?

*Mr. Light.* It was a long Time before I heard any more of this Affair. As they were quiet, without any Application to me for the good, or to come into any Contribution, which I was resolved against, so I did not think it prudent for me to make any Bustle amongst my Brethren. I thought I had done my Duty. I had given my Opinion when it was required, and I did not stir in it till the Masters apprehended themselves very much aggrieved, by the Variation the Master of the Rolls was pleased to make in the Practice of the Court, by deducting all the Money of the Sutors to be brought before his Office, and sometimes to be put out by him without the Masters Approbation, which not only deprived the Masters of any Advantage from thence, but of those Fees that were due to them, on the receiving and placing out at Interest, or paying it out again; and, as I took it, it was Wayward the End, nor was it for the Benefit or Security of the Sutors. Because if the Truth was any great, and the Sutor's Property not safe in those Men's Hands, much less was it safe in the Hands of one. Therefore I apprehended there was Reason for Complaint. On this Account we had several Meetings; I was always ready to come into any Representation to my Lord, in hopes that Grievances of all Kinds might be looked into, and, I believe, often complained to my Lord of these Matters. We went to my Lord Chancellor, and acquainted him of our Grievances; my Lord desired us to put them into Writing; we all readily concurred in that: Accordingly we drew up our Complaints of these, and other Encroachments on our Offices, by Way of Representation, which were delivered to my Lord Chancellor, and after my Lord had had it some Time, and nothing done, we frequently importuned my Lord to consider the declining State of our Offices, and I concluded that would bring the other matters on the Stage, without which, nothing effectual could be done. My Lord said he would have a Conference with the Master of the Rolls, and the Masters, in order to debate these matters; and I did not doubt, but, upon that Occasion, the Deficiency of *Duror's* would come out, and that something might be done for us, consistent with the Honour of the Court, and the Sutor's Safety. But that Conference was delayed; the Grievances in all Respects grew greater; we grew more troublesome to my Lord Chancellor; my Lord then had there was a Necessity of redressing all the Grievances; he mentioned the Masters giving Security, that of taking Securities for the Sutors in other People's Names, and commencing the Masters in the Enjoyment of their Offices, as they had used to have them, and said it would be best to do all together. With this we were put off for some Time, but, on further Solicitation, my Lord said, he was now determined to do something in this Affair, and his Lordship desired a more particular Account of the Grievances complained of by the Masters, and their Reasons, and the Inconveniences to the Sutors that accrued from the new methods, which the Master of the Rolls had turned the Business of the Court into; and that the Matter, both with respect to the Sutors and the Masters, might be fully understood, his Lordship pressed, that something of this Kind might be drawn up in Writing and laid before him, and he would make Orders proper to make a thorough Reformation in the Court: And I remember his Expedition to me was, it would free him much Trouble, if what was drawn up by the Masters, not only contained the Things which they had Grounds to complain of, but was put into the Form of Orders necessary to be made for him to consider of, and alter, and add such others as he had prepared or thought necessary. And soon after, a second Representation was prepared, and was delivered to my Lord. And after his Lordship had had it some short Time there was a Meeting at my Lord Chancellor's, where the Master of the Rolls and the Masters were present, and, at that Time, there was a good deal of Discourse about the Money. But when the Master of the Rolls began the Topic of his Jurisdiction, exclusive of the King's Commission, Heat arose, and little was done at that Meeting. I think some Persons of Quality came to speak with my Lord, and that broke it up. I was sent afterwards with my Lord, and I asked his Lordship what he intended to do. He said he was sorry Masters were got to that Height, but that he found if the Masters would give up the Jurisdiction, they might be made easy in their Demands; and Things put upon the old Foot, and the Sutors might live too. Upon that Occasion, I did take the liberty to say, if there was a judicial Power in the Masters by Virtue of the King's Commission, as it was his Majesty's Prerogative to grant, we could not give it up; and that, for my Part, I would not exchange or barter it for the Custody of the Sutors Money. I believe my Lord proposed, at this Meeting, as he had the Assistance of the Master of the Rolls in making their second Orders; and I recollect, that after the Deficiency of this last Representation, which I was present at, I

heard that my Lord had shown it to the Master of the Rolls before a Meeting, which I took notice, my Lord during it for his own private Use. Upon which I went to him in order to withdraw it, and told it was not a such Habit, that all the Masters had not considered it; whether I alleged to him, or if to some, I don't remember, but it was that it was very proper to Masters should all sign it; and I think I read it back to the Masters; and that we all signed it; and then it was delivered back to my Lord. And, I believe, upon the Face of that Representation it will appear, that it was drawn up at my Lord Chancellor's Request.

The first Representation was chiefly confined to such Grievances as affected ourselves, the second is more at large; I don't know whether Lordship will produce it. Some Things in it I don't seem to bear hard on his Honour, the Master of the Rolls, and may give Offence; but it is to be considered, that it was written at a time when there were great Differences between the Master of the Rolls and the Masters: Nay, I think I may say, the whole Court of Chancery was in a State of War.

*Mr. Pinner.* I desire he may be asked, if he were laid before my Lord Chancellor the Expectations of the World, that he would reform these Abuses and Grievances?

*Mr. Light.* I have often mentioned that to my Lord, and prefix it to other more and oftener than became me. I was ashamed to be too forward, and I was suspected that my Lord did not do something in it; and I soon found, and have often told one or other of the Masters and others, that my Lord would do something in it. However, I continued to be in pressing it, and as I have mentioned the great Inconveniences to the Court would be run into for want of a proper Regulation, and with an all Grace we could apply to his Successors to relieve these Grievances in Case his Lordship grew weary of the fatigue of Business, and wanted to retire, so that they would tell us, we had long acquainted with them, and that his Lordship not having so much as looked into them, they would not care to meddle or interfere in it. I pressed it home to his Lordship, and though he made Doubts and Difficulties where there was none. Indeed I thought as this his Lordship wanted his usual Relations, and I almost ventured to say so. I know not whether it is very proper to mention it, but I did take the Liberty to tell his Lordship, that if he did relieve these Grievances, unless my Lord *Lightman* favoured him, I refused of being then settled on any better Foot. I hope my Lord will pardon my mentioning his Name.

*Mr. Serj. Pinner.* My Lords, we have done with Mr. *Lightman*.

*Mr. Serj. Pinner.* I desire he may be asked, when the first Application was made by the Masters to relieve their Grievances?

*Mr. Light.* I really can't tell. I went to frequently to my Lord, that cannot distinguish one Time from another. I believe other Masters that went seldom can tell better; but I believe it must be a Year and a half, or two Years ago, or more. I cannot tell the Time.

*Mr. Serj. Pinner.* I desire he may be asked, whether those was any second Application, before the Representation was put into Writing?

*Mr. Lightman.* Immediately upon the Master of the Rolls's varying the Method of the Court, and deducting the Money to be paid in to the Usher, the Masters went to my Lord Chancellor's, which I believe must be before Christmas, 1722. I believe Mr. *Halford* remembers it better; and that from Time to Time, I have often told him that my Lord Chancellor would do something in it.

*Mr. Serj. Pinner.* I desire to ask him, when that Meeting was between the late Lord Chancellor and the Master of the Rolls?

*Mr. Lightman.* That I believe was the Beginning of last Summer.

*Mr. Serj. Pinner.* We desire he may say who was then present at that Meeting with the Master of the Rolls?

*Mr. Light.* My Lords, At that meeting with the Master of the Rolls the Lord Chancellor was there, had the Great Seal before him; and the two Senior Registers were there, with Pen, Ink, and Paper before them, in proper Habits, the Master of the Rolls, and all the Masters in that Court; and the Secretary was there, and the Masters all hoped the Orders were to be then pronounced; but I can't remember that the Registers put Pen to Paper. The Usher was likewise there.

*Mr. Serj. Pinner.* I desire he may, if he can recollect it, give a particular Account of what passed at that meeting.

*Mr. Light.* The Masters insisted they had a Right by Custom to have the Money brought before them, where there was any Reference to a Master, whether it was by Orders made upon hearing, or by Injunctory Orders, or if there was a Direction in that Order, by which the Money was brought in for the Payment, or Application of it, as their Custom they alleged, that the Money had, some out of mind, been brought before the Master, to whom the Reference was directed, and they did admit that where Money was brought upon Bills of Interpleader or Injunctory Orders, where there was no Reference to a Master, the Money had usually been directed to be brought into Court, in Order to be kept till it could be determined whether it was, or to what Use it was to be applied. And there they admitted the Money was formerly kept by the Usher. Thus I apprehended was insisted upon by the Masters as their undoubted Right, and it was expected an Order would have been then made declaring it so.

*Mr. Serj. Pinner.* I desire to know what further passed relating to Facts only, without any Accounts of his own Expectations?

*Mr. Light.* Some Debate arose about the Master of the Rolls's Jurisdiction, but I don't say by himself.

*E. of Mar.* I desire to put Mr. *Lightman* in mind of some Things, and first to ask him, whether upon that Applications they had made to me in relation to the Alteration or Variation, as he calls it, as the Practice of the Court, by the Orders made by the Master of the Rolls, whether I did not require them to lay Precedents before me, that I might be satisfied how that matter lies?



Mr. Lightfoot. Your Lordship did, but it was long before that moment—before a Year and more.

Mr. Lightfoot. Whether there had not been like Directions, that the Usher should lay Precedents before me?

Mr. Lightfoot. I don't know of any such Directions to him, but I remember my Lord Chancellor called for his Precedents, and wondrous he need not brought them, if he had any for his Purpose.

E. of Arundel. I desire Mr. Lightfoot may recollect whether the Question was not put to the Usher with relation to the Usher of the Court, to put the money into the Masters' Hands, in all Cases where the money was brought into Court, to be disposed of, either to be put out at Interest, or paid to Creditors, or Legatees, whether he had any one Precedent to the contrary?

Mr. Lightfoot. I remember he had none, and I apprehended the Usher did not make out any Sort of Claim to keep such money.

E. of Arundel. I don't see what the Usher made out, but what Questions were asked him about the Usher and Precedents?

Mr. Lightfoot. I believe they were asked for, and I am sure he then produced none.

E. of Arundel. Pray, recollect, and consider; did I speak to him as to one that had not any Precedents to produce; or did I make mention as if he had brought Precedents, and ask him if he could say, that among those Precedents there was one to the Purpose, to make out that the Usher was not?

Mr. Lightfoot. I say your Lordship blamed him for not bringing these Precedents. I believe your Lordship asked him, if he could bring any Precedents to the Point? And, to the best of my Remembrance, he said he had none, or gave no satisfactory Answer, but such as I thought evasive; but I cannot remember particularly what your Lordship said he said to such other.

E. of Arundel. This is a very indifferent Account; since Mr. Lightfoot hath in good a memory, I desire to know whether the Usher was not told, that his Precedents had been read, and possibly I might have overlooked some more material; and therefore desired him to show whether there was more, than any one Precedent, that related to money brought in to such Cases?

Mr. Lightfoot. He produced none.

E. of Arundel. Did it not appear that he had produced Precedents before, and that had been read, and that possibly I might have overlooked some of them?

Mr. Lightfoot. On your Lordship's mentioning of it, I do recollect something did appear, that your Lordship had seen his Precedents, and did not say he had brought none.

E. of Arundel. I desire he may be asked, whether he did pretend he could produce any?

Mr. Lightfoot. My Lords, I cannot be particular in that.

E. of Arundel. I desire to know whether he did not own that he had as such Precedents?

Mr. Lightfoot. In answer to that, my Lords, I cannot say positively he did or did not; for I believe I have seen some few Orders of suitant Cases, where Precedents of money being brought into the Usher's Hands, in order to be disposed of after hearing. But there were but few of them.

E. of Arundel. My Lords, I desire Mr. Lightfoot may be asked, whether in Recollection were not asked about the Practice of the Court, and if at that time Observation and Experience the money in the Cases before-hand was ordered to the Usher?

Mr. Lightfoot. They were, my Lords.

E. of Arundel. And what Answer did they make?

Mr. Lightfoot. They answered, that the money, after hearing, and on instant Order, where the Application was directed, had been usually ordered to the Masters.

E. of Arundel. I desire Mr. Lightfoot may be asked, whether it was not after this, that the Master of the Rolls began to speak with relation to the Jurisdiction, and how that was introduced?

Mr. Lightfoot. I have forgot the Circumstances and manner of its being introduced by the Master of the Rolls. But I remember one Expression of his Honour's, That he would have the Masters consider how proper it was for them to insist upon a Jurisdiction, which would empower them to order money into their own Hands. But how he introduced that Difficulty, I don't know; but I saw the Lord Chancellor had not a mind that Topic should be touched upon, and that the Master of the Rolls brought in much against his Lordship's Inclination; but how I don't remember. Your Lordship puts me in mind, I may recollect.

E. of Arundel. The Usher, was not he apprised of this meeting?

Mr. Lightfoot. Yes.

E. of Arundel. Did the Master of the Rolls give any Opinion relating to the manner of the money being paid to the Usher?

Mr. Lightfoot. He refused on his own Jurisdiction, and both introduced and stuck to that Difficulty.

E. of Arundel. Do you remember his saying, that the Masters must sit and stand at the Rolls, if they contended for Jurisdiction?

Mr. Lightfoot. My Lords, I do not.

E. of Arundel. You spoke of my Interlocution: Was it not with respect to the Dispute between you and the Master of the Rolls?

Mr. Lightfoot. I could not tell where it stuck, there was some Difficulty made at determining that matter, but your Lordship did not condescend to use your Reasons why you did not proceed upon that, or any other of the Masters' Affairs.

E. of Arundel. I perceive, Mr. Lightfoot, you did not, every Time you came down, speak to me of the Affairs wherein the Masters thought themselves hurt?

Mr. Lightfoot. No, my Lord, I did not.

E. of Arundel. You sometimes spoke to me about the money, and at other times relating to the Master of the Rolls; I desire to know, when you came to me with respect to the Dispute with the Master of the Rolls, and I know some made on your Office; if it was not upon that you seemed to insist?

Mr. Lightfoot. Your Lordship always said, it was proper to speak all at one Time, that some Security should be given by the Masters, and something done to make it reasonable to expect it from them; which was to establish the Masters in their past Rights; and upon that Question your Lordship mentioned taking Securities in different Persons Names, and upon that some of the old Proposals of mine was revived.

E. of Arundel. I have no further Questions to ask.

Mr. Serj. Parg. My Lords, we desire Mr. Holford may be called.

(Mr. Holford called.)

Mr. Serj. Parg. My Lords, we desire Mr. Holford may be asked, whether at any Time, and when, he heard of a Proposal made by Mr. Lightfoot, and when it was made public?

Mr. Holford. My Lords, a good while ago, I believe two or three Years, Mr. Lightfoot and I had a great deal of Discourse about the Condition and Circumstances the Court by the Difficulty. Accidental that the Confusion that was like to happen by the said Proposal, that had happened to Mr. Dormer. We did talk of a great many Things that were proper to remedy it. A great many were the same that are mentioned in the Letter that hath been read. I think I told him, it was very right, especially as to the matter of the Securities, which was the greatest Power a Master was trilled with; for as the Securities were above three Parts in four of the whole Trust, if there could be a Way found out to secure that, it would be a taking away three Parts at four of our Trust, and consequently would not leave so great a Power in the Masters, but as long as they were taken in the Name of one Person, and no trust declared, he could dispose of those Things, and nobody could hinder it. Therefore I thought it proper to be taken in two or three Names. I believe when it was proposed to be in two Masters, it was mentioned there might be a third, and then no Harm could happen to the Suits, unless Corruption ran through the whole Office. I remember some Time after, that Mr. Lightfoot did show me the rough Draught of this Letter, which he said he had sent to my Lord, and we read it over together at my House: I told him it was very right, and that he had put it upon as good a Foot as upon the first Consideration: it could be put upon. That every one was sensible to Inconveniences; but, for my Part, I thought it looked fair, in that, as the matter of the Securities, the money in the Masters Hands was left pretty much to the Direction of my Lord Chancellor.

Mr. Serj. Parg. I desire he may be asked, whether this Proposal that was made is agreeable to him, so far, that if they were directed by my Lord Chancellor, he would have submitted to them?

Mr. Holford. Yes, my Lords, I should have readily submitted to them.

Mr. Serj. Parg. I desire he may be asked, whether he remembers any Discourse of this Proposal before my Lord Chancellor in his Presence?

Mr. Holford. I don't remember I ever had the Honour of speaking to my Lord Chancellor about any of them, nor to have been at any meeting where they were spoken of before my Lord Chancellor.

Mr. Lightfoot. My Lords I desire he may be asked, whether he can recollect when he had this Discourse with Mr. Lightfoot, and when this Draught of the Letter was drawn?

Mr. Holford. About two Years ago; some time after it had been written, and sent to my Lord, Mr. Lightfoot told me, says he, I have sent to my Lord to the Effect of what we talked of; and I will show you the Letter; and he pulled out the Copy, and showed it me.

E. of Arundel. Was you at that meeting which Mr. Lightfoot hath mentioned, when the Masters and the Master of the Rolls were there? And what passed, as near as you can remember?

Mr. Holford. My Lords, I think it was upon Midsummer-day, if I remember right, and the Masters, the Usher, the Registrar, and the Master of the Rolls, were all there. My Lord Chancellor declared there had been some Disputes in the Court of Chancery, and he had called them together to adjust those Disputes, especially in relation to the money of the Court. I believe the Usher was called upon to know whether he had any Precedents to offer in Justification of his own Right, or of what he claimed as a Right; and the Usher, I think, said at that Time, he had no more than he had already delivered to his Lordship; I believe his Lordship said those Precedents were not much to the Purpose; the Usher said he had no more, and delivered no more; and after some Discourse, there were several People spoke, the Usher inferring there were some Precedents to the Purpose. Then a Dispute arose about the Jurisdiction of the Master of the Rolls; and the Affairs broke up at that Time. I think nothing more was done.

Mr. Serj. Parg. My Lords, we desire that Mr. Kyngham may be called.

(Mr. Kyngham called.)

Mr. Serj. Parg. My Lords, we desire that Mr. Kyngham may give your Lordships an Account, whether he knows of any Proposal made to the Earl of Mansfield, relating to the securing the Effects of the Suits?

Mr. Kyngham. Yes, my Lords, I do; there were several meetings among the Masters privately before they came to an Agreement. I think they all did agree, that they would go to my Lord Mansfield, and propose to him to give Security, and to settle the matter of the Securities, so that it should not be in the Masters' Power to dispose of them. I remember it was agreed upon, that it should be so agreed upon to my Lord, and I believe all or most of the Masters, went to my Lord Mansfield, and did propose it to my Lord. I am very positive some Proposal was laid before him. Some proposed to get People to be bound with them, but there might be some Difficulty in that, others proposed that they should give Land-Security, but it was thought likewise that might meet with some Difficulty in relation to the Tail.

Mr. Serj. Parg. Was there any Proposal made as to the Securities in their Names?—Mr. Kyngham. Yes.

Mr. Serj. Parg. In what manner was it proposed that the Securities should be taken?

Mr. Kyngham. I am not positive, but it was to this Purpose; that they should be put in one or two of the Masters' Names, and to the Persons concerned. I am not certain how that was, but it was something of that Kind.

Mr.



















\* Tallies, Orders and Bonds in my custody. And as to the Money, I am ready to give your Lordship satisfaction, that I am able to answer it to every Person that is entitled thereto. *The Bench.*

Mr. Serj. Popham. Your Lordships observe, he hath left out the Words *to a Surety*, because he thought that he could not so clearly make it out. I beg leave to mention, that these Accounts and Subscriptions, thus signed, were actually delivered in, and laid before the Council, and are the Original Accounts.

Mr. Serj. Popham. My Lords, I would ask Mr. Bennett, when this Proposal was offered to him, that he should subscribe as Mr. Hayford had done, whether he made any Excuse, or pretended he was not able to do so? Mr. Thomas Bennett. No, I did not, I did as the rest of the Masters did.

Mr. Serj. Popham. I desire he may inform your Lordships when this was? Mr. Thomas Bennett. I think, it was the 14th or 15th of November; I can't be positive as to the Day.

(*Mr. Kyndall called.*)

Mr. Serj. Popham. My Lords, we desire that Mr. Kyndall may give your Lordships an Account, whether he was present at this Meeting on the 14th of November, and what passed there relating to their Accounts?

Mr. Kyndall. Yes, my Lords, I was there the 14th of November.

Mr. Serj. Popham. What passed at that Time at the Earl of Macclesfield's? Mr. Kyndall. I think came there before the rest of the Masters, or only two or three were there before me. We gave my Lord an Account, that we had drawn out our Accounts of the Securities and Cash, and the Balance in each Master's Hands. Soon after the rest came. My Lord then asked Mr. Hayford's Account, being the Elder Master. A Letter at the End of his Account was read: My Lord seem'd to be affected with it, and to approve very well of it. There was some Writing at the End of it relating to the Ability. My Lord said, it would do very well to have something in the Cash, payable at the End of the other Masters' Accounts, and mentioned to us to go down and write it accordingly.

Mr. Serj. Popham. Can you recollect what Expressions the Earl of Macclesfield used, to recommend it to the Masters?

Mr. Kyndall. My Lords, I can't fully recollect. I think it was, It would look well before the Council, and prevent a further Enquiry, or a parliamentary Enquiry, I am not positive which; But that I understood to be the meaning of it.

Mr. Serj. Popham. What was it that would look well to the Council?

Mr. Kyndall. What Mr. Hayford had writ at the Bottom of his Account, *Your duty never ready, &c.*

Mr. Serj. Popham. My Lords, I desire he may be ask'd, whether there was an Enquiry made by the Earl of Macclesfield as to his Ability or Sufficiency?

Mr. Kyndall. No; I am sure as to myself, and I don't know as to any body else.

Mr. Serj. Popham. I desire he would inform your Lordships, what Subscriptions he had first made, and what was added, or what Advice was given?

Mr. Kyndall. I had writ before: 'My Lord, the Person I employ to write out this Account, has only gone that far as to the Number of the Bonds. I have brought the Bonds with me, and desire you'll appoint any Person to sign them, and the other Securities I have here given an account of.'

Mr. Serj. Popham. What was said afterwards? This is wrote with a different Ink from that before: *And as to the Money, I am ready to pay it as the Person entitled thereto.* This is with a different Ink.

Mr. Kyndall. I believe, upon looking upon it, I went down with the rest, and wrote that in the Parlor in my Lord's House.

Mr. Serj. Popham. I desire he may be asked, whether he, or any other of the Masters then received any Explanation how this Sufficiency or Ability was to appear?

Mr. Kyndall. Not then, I don't remember any thing of it.

Mr. Serj. Popham. Or at any other Time?

Mr. Kyndall. Some time after this, this the 10th of November, and I believe, between that and the 14th, when we were to attend the Judges, the Masters were summoned to meet at Mr. Edwards's House: I understood it was a Summons from my Lord Macclesfield; and when we were there, there came Mr. Cattergrew and Mr. Davis. I don't remember all the Discourse; but they were telling us what was to be done: First, we were to produce our Securities, and there would be no great Nicety in producing them; And then, next, we were to produce the Balance of Cash: And I remember, on that, Mr. Cattergrew said, You must stand by one another, and aid one another. *Banks-Notes* said he, will be left; but if you can't get them, then Goldsmiths Notes; you must get one or other to produce and show.

Mr. Serj. Popham. I desire he may be asked, what he thought he meant by the Proposal of getting Goldsmiths Notes, or Bank Notes?

Mr. Kyndall. I did take the meaning in the worst sense to be, for the Masters barely to make a Show of them; and that made me complain; and I spoke warmly, and said, I saw what the Design was, and that I would borrow any money on that Occasion was a Knave, and he went out in a Fool.

Mr. Serj. Popham. I desire he may be asked, whether there was any Recommendation by Mr. Cattergrew or Mr. Davis, and in what particular Expressions these Recommendations were made?

Mr. Kyndall. I believe, Mr. Lydhouse expressed himself, that if they borrow'd Goldsmiths Notes, and they were detained, the Goldsmiths Shops would be shut, and People would be enquiring what Holiday it was.

Mr. Serj. Popham. I desire he may be asked, what was said about making a Show? If Mr. Cattergrew own'd what was the meaning of those Words?

Mr. Kyndall. I don't remember: They were pretty warm, and said they would go to my Lord Macclesfield, which they did, and return'd again.

Mr. Serj. Popham. My Lords, I desire he may be asked, whether it was generally understood among the Masters, their giving of Banks-Notes and Goldsmiths Notes was to be understood before them?

Mr. Kyndall. I understood it to myself, and I believe several others did; Mr. Lydhouse, and Mr. Hayford, and some of the others did so, by what they said.

Mr. Serj. Popham. My Lords, we have done with this, Was he?

Mr. Serj. Popham. My Lords, I desire to ask the Witness, the same Question that I ask'd the other; and that is, whether at the time when this Proposal was made to him, that he should subscribe as Mr. Hayford had done, he made any Objection to it?

Mr. Kyndall. No, I did not make any Objection to it. I had been present first, and with my Lord, and at the further End of the Room, that I remember less what happened at that time, than other People did.

(*Mr. Lydhouse called.*)

Mr. Serj. Popham. My Lords, we desire that Mr. Lydhouse may give an Account of what passed at this meeting, relating to the bringing in of the Accounts?

Mr. Lydhouse. What meeting? That at Mr. Edwards's, or that at the Earl of Macclesfield's?

Mr. Serj. Popham. That at Mr. Edwards's.

Mr. Lydhouse. I was at Mr. Edwards's about that Time, at some meeting when our Accounts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had for many meetings about that time at Mr. Edwards's, that I don't remember exactly which was before, and which after, I remember, at the meeting when Mr. Cattergrew and Mr. Davis both were there, there was some Discourse relating to the producing of the Securities, and the Balance of the Cash. I then asked, Whether we should produce it in Bank Notes, or Goldsmiths Notes, and I understood, it was hinted that the Goldsmiths that we had dealt with, would assist any Master that wanted money, but by whom was said I can't recollect. The Answer I made to that was, that I should be sorry that any Master should borrow Notes of a Goldsmith, and that they should be paid or secured when produced, which I apprehended would be done; and next morning several Goldsmiths would be forc'd to shut up their Shops, and it would look like a Holiday in the City.

Mr. Serj. Popham. Do you remember any Thing concerning a Note?

Mr. Lydhouse. I don't remember the Expression of a Note.

Mr. Serj. Popham. What Application was made to any of the Masters to carry on their Accounts, and to whom?

Mr. Lydhouse. My Lord, about goldsmiths morning first for me, and desired me, that when the Accounts were brought into the Council, I would be thereabout; that there was any occasion to clear up or explain anything, or give further Satisfaction to the Council, I might be ready. I told him Lordship, I would give no Satisfaction about any such Accounts but my own. But if his Lordship pleas'd that I should write, I would be thereabout, and if his Lordship pleas'd, I would have another Master with me. I nam'd Mr. Hayford, and my Lord desired me to acquaint Mr. Hayford with it, which I did, who said, he was ready to go with me to answer any Questions that should be ask'd, arising at the Perusal of his Accounts.

Mr. Serj. Popham. What did he desire you to attend for?

Mr. Lydhouse. To resolve any Question or Difficulty that should arise before the Council. After this, Mr. Cattergrew told Mr. Hayford at Mr. Edwards's, that my Lord desired that two of the Masters should attend the Council with the Accounts of the whole, and that Mr. Hayford, being the senior Master, should be one, and he was to choose whom he would have go along with him; and having given Mr. Hayford Instruction before my Lord's Inclination, Mr. Hayford desired me to go with him.

I told him, I did not care to carry in any other Accounts but my own; as I had not concern'd myself in other Masters Accounts, I would not then begin; I would not carry any but my own, and nobody else should carry mine; I would not be a Representative of the Body.

Upon that, Mr. Hayford recollected himself, and said, Nor he neither would carry no Account but his own. I said, the Accounts were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr. Serj. Popham. Your Lordships will observe, the President thought most proper to appear for the rest of the Masters, Mr. Hayford, and Mr. Lydhouse, were so apprehensive of the Masters being deficient, that they did not care to appear for them. I desire Mr. Lydhouse may be ask'd, what pass'd the 10th of November, when the Accounts were deliver'd to the Earl of Macclesfield?

Mr. Lydhouse. My Lords, upon the 10th of November my Account was not ready at the time I was to deliver it. I rather chose it should not be ready; because I did not care that it should be carry'd in by any body but myself. However, I waited at the proper Time; and when we came there, Mr. Hayford deliver'd in his Account, and a Letter he had writ to his Lordship, and said to his Account, which was then read.

My Lord seem'd to like the Letter, and took notice of it; and I think, another or two, who were my Securities, deliver'd in their Accounts. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finish them, and attend his Lordship with them at the Court by eight of the Clock. Accordingly I did, and sent it in to his Lordship.

Mr. Serj. Popham. What pass'd further relating to their signing of the Accounts?

Mr. Lydhouse. I know nothing of it; for I went away to finish my own.

Mr. Serj. Popham. My Lords, we desire that Mr. John Bennett may be call'd.

(*Mr. John Bennett appeared.*)

Mr. Serj. Popham. My Lords, we desire that Mr. John Bennett may be ask'd, whether he was at this meeting at Mr. Edwards's House, and what pass'd at that time?

Mr. J. Bennett. My Lords, I was at this meeting at that time, when Mr. Cattergrew and Mr. Davis came in, and said to us they came from my Lord Chancellor, and Mr. Cattergrew told us, he had brought Mr. Davis with him, because he was deaf, and could not well hear. Mr. Cattergrew then put the two Questions to properly ask, whether we were willing that our Bonds, and other Securities in our Custody, should be inspected by him or any other? All of us were willing, and agreed to that. The second was, whether we were willing, or would produce the Balance of Cash in our hands before the Council? To this the Masters made a *Scandal*, and I







was taken out of the Room, and subscribed the Substances, if not the Words of Mr. *Holcroft's* upon my Account, and then I delivered it to my Lord again.

Mr. *Serj. Pynell*. Read that Subscription.

Mr. *Edwards* read. "The several Sums of money and Securities mentioned in this Account, are what have come to my Hands since I was admitted a Master, separate from what were in the Hands of Mr. *Dennis* during the time he was a Master (the account whereof, by reason of the Shortness of time, I have not been able to settle, but will as soon as possible, and for which I am ready to produce Certificates from the several Companies and Offices, if your Lordship requires it. And as to the Money, I am ready to pay it to every Person lawfully intitled thereto, having a proper Discharge for the same."

N<sup>o</sup>. 10. 1754. H. Edwards.

Mr. *Serj. Pynell*. My Lords, if they have done with this Witness, I desire he may be asked, if he was not ready to pay his Balance according to his Subscription?—Mr. *Edwards*. Yes, I was, I could have paid it in a Week sooner than the time required.

[Mr. *Conway* called.]

Mr. *Ed. Gos*. My Lords, I desire that Mr. *Conway* may give your Lordships an account, whether he was at this meeting.

Mr. *Conway*. My Lords, I was present at the first meeting at Mr. *Edwards's* House, when Mr. *Conington* delivered his Lord Chancellor's Command, that we should provide and prepare our Accounts: But nothing more happen'd during the time of my stay at that meeting. I went away immediately. At the second meeting Mr. *Conington* and Mr. *Dennis* were there: Mr. *Conington* had a great Cold, and, as I remember, there were two Proposals made: The first was in relation to our Bonds and Securities, and the second was in relation to the Money and Cash. After every Master had deliver'd his Opinion in these Points, Mr. *Conington* and Mr. *Dennis* went to wait upon my Lord Chancellor with an account of what the Masters had said; and before they came back, I was gone.

Mr. *Serj. Pynell*. I desire he may be ask'd, whether at that time, when it was propos'd to the Masters to produce their Cash, they said they were able to do it?

Mr. *Conway*. Every Master deliver'd his Opinion as he thought fit. Mr. *Ligonier* warmly said, If we produced Goldsmiths Notes, and they should be secur'd, the Goldsmiths Shops would be shut up, and People would be enquiring who Holiday it was. Mr. *Kingsland* said some Objections, every one look'd as they thought fit.

Mr. *Serj. Pynell*. I desire he may be ask'd, whether they all declared, they were able and ready to make good their Accounts?

Mr. *Conway*. I think they all did.

Mr. *Serj. Pynell*. Whether to produce their Effects or their Cash?

Mr. *Conway*. I am not sure, whether it was mentioned Cash or Effects; we made no Deduction at that time between Cash and Effects.

Mr. *Serj. Pynell*. I desire he may be ask'd, whether he himself declared, that he was able and ready to produce his Effects?

Mr. *Conway*. I did declare it at that time, as I afterwards writ, that I would endeavour to produce my Effects.

Mr. *Serj. Pynell*. Whether there was any, and what Advice or Instruction given, relating to their settling of one another?

Mr. *Conway*. No such thing happen'd until I had there.

Mr. *Serj. Pynell*. I desire it may be ask'd, whether Mr. *Conway* at any time afterwards borrowed any money of any of the Masters, and of whom?

Mr. *Conway*. The last time I attended the Judges and the Directors of the Bank, I did bring my Securities, and an Account of my Effects at the same time, without borrowing a Farthing from any Person: Before the Securities were gone through, and the Account of my Effects taken, it was observ'd, that this time was liable to Objection, as consisting of Land, Mortgages, Bonds and Notes, and things of that kind. And before I went, I was told, that some of the Masters had taken an Oath; I desired to know what that Oath was? It was answer'd, that it was a voluntary Oath; and I said, I could only swear, that I had Effects to answer, and that I would endeavour to raise their Effects into Cash; and so withdrew.

Mr. *Serj. Pynell*. I desire it may be ask'd, whether he borrowed any money?

Mr. *Conway*. Some time after this I went upon Mr. *Goffroy's*, and before I came away, he asked me if I had any Bonds? I told him I had; then pray, says he, let me have what you can spare, and lend them immediately: Whereupon I went Home, and lent him 5000*l*. India Bonds. Some Days after that, I expected Mr. *Goffroy* to return me the Favour; and I carried to him Effects to (as I apprehend) the Value of 6 or 7000*l*. or more; and I desired him to lend me Bonds, and he seemed unwilling without the Security; and he kept the Security.

Mr. *Laws*. He hath not answer'd to those Questions, whether he borrowed money, and what Sums?

Mr. *Conway*. Mr. *Goffroy* lent me upon the Bonds 5000*l*. and Mr. *Brent* 2000*l*.

Mr. *Laws*. Only to pursue this Question, I desire to know, whether the Securities were turned into Money, or into Notes?

Mr. *Conway*. Yes, my Lords, they were turned into Notes.

Mr. *Laws*. I desire he may be asked, whether they were lock'd up, or he did take them back again?—Mr. *Conway*. I took them back again.

Mr. *Laws*. What became of them afterwards?

Mr. *Conway*. Some of them I paid off, others I returned to the Person that had advanced me money on their Bonds.

Mr. *Laws*. I take it, he says, he had the Effects that produced those Notes from Mr. *Goffroy* and Mr. *Brent*; therefore I desire to know, what became of those Notes after he carried them back from the Judges?

Mr. *Conway*. I returned them to the Person that had advanced me the Notes on their Bonds.

Mr. *Laws*. Who was that?

Mr. *Conway*. The Goldsmith, Mr. *Ropers*, at Temple-Bar.

Mr. *Plummer*. I desire to know when he returned those Bonds again?

Mr. *Conway*. In a few Days after.

Mr. *Laws*. My Lords, it may be necessary to examine how it was that he persuaded the Goldsmith to let him have those Notes?

Mr. *Conway*. I gave him Bonds for them.

Mr. *Laws*. Whether were those Bonds that you had from Mr. *Conington* and Mr. *Brent*?—Mr. *Conway*. They were.

Mr. *Laws*. Whether they were not delivered to the Goldsmith in the Nature of a Pledge for those Notes?—Mr. *Conway*. Yes, they were.

Mr. *Laws*. What became the Bonds?—Mr. *Conway*. I return'd them.

Mr. *Laws*. To whom?—Mr. *Conway*. To Mr. *Goffroy* and Mr. *Brent*.

Mr. *Serj. Pynell*. When he carried back the Notes to the Goldsmith, at that time, whether he took up the Bonds?—Mr. *Conway*. I did.

Mr. *Serj. Pynell*. As I apprehend, he says, he had lent him 5000*l*. India Bonds, and in return he expected that Mr. *Goffroy* should still him 5000*l*. I desire he may be asked this Question, whether the 5000*l*. he lent him was supplied Mr. *Goffroy* with, was after or before he produced his Cash to the Committee?—Mr. *Conway*. After.

Mr. *Serj. Pynell*. Was it before Mr. *Goffroy* had done it?

Mr. *Conway*. After he had produced his Securities.

Mr. *Serj. Pynell*. Was it before or after he had produced his Cash?

Mr. *Conway*. It was after he had produced his Securities, and before he had produced his Cash.

Mr. *Serj. Pynell*. My Lords, we think it will be very necessary to be before your Lordships a General State or Account of the total Deficiency, to show how much, upon the Examination and Enquiry that has been made, the total of the Deficiency as to the several Offices amounts to; and we apprehend, that we are this day to give an Account of the additional Deficiencies that have been discovered since I apprehend there was at that time near 100,000*l*. Deficiencies.

Mr. *Serj. Pynell*. I desire he may be ask'd, whether at that time, when he wrote the Subscription, he was able to pay the Balance of his Account?

Mr. *Conway*. I was, in Effects I had, and I had no other way.

Mr. *Serj. Pynell*. I desire he may be ask'd, if my Lord *Chancellor* asked him as to his Ability?—Mr. *Conway*. No, my Lords, he did not, to any of my members he did not.

Mr. *Serj. Pynell*. I desire he may be ask'd, what Deficiency there remains upon his Office, whether he can recollect how much it is?

Mr. *Conway*. My Lords, I believe it is 13,000*l*. my Charge, of which I can take off something in my Post-Account.

Mr. *Serj. Pynell*. I desire he may be ask'd, whether he is now able to make good the Deficiency in his Office?

Mr. *Conway*. Yes, my Lords, I am.

Mr. *Serj. Pynell*. Whether he hath made any Covenant of any Effect as a Security for Mr. *Conway*. I have.

Mr. *Serj. Pynell*. I desire he may be ask'd, whether any thing, or how much, hath been rais'd out of that Estate?

Mr. *Conway*. It made so very lately, that I don't know that any thing hath been rais'd since: It is but a few Days ago that it hath been made.

Mr. *Serj. Pynell*. My Lords, I would be glad to know, as there is a Balance of 13,000*l*. whether he stands indebted to any other Person but to the Surors of the Court, and to whom?—Mr. *Conway*. No, my Lords, I don't owe any thing to any body, to my Knowledge.

Mr. *Laws*. I should be very glad if Mr. *Conway* could convince his Lordship out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Estate, that is to be made good?

Mr. *Conway*. It is to be made good by an Estate in Land.

Mr. *Laws*. I desire to know, whether that Estate is settled, whether it was not settled upon his marriage?

Mr. *Conway*. It was never settled on my marriage. I was Tenant in Tail, and my Wife and Son jointed with me as enjoying a Fee.

Mr. *Laws*. Whether it is not settled by Will?

Mr. *Conway*. I was Tenant in Tail by the Will of my Father, I have never a Joint, and my Wife and Son have jointed with me.

Mr. *Laws*. What Interest had your Son in it?

Mr. *Conway*. No Interest, as I apprehend; but I thought it unnecessary to say so, to take off all Difficulties and Objections to the Tale Mr. *Goffroy*. Whether there are no Annuities charged upon that Estate, and what they are?

Mr. *Conway*. There are no Annuities charged on that Estate.

Mr. *Goffroy*. No Payment to the Mother?

Mr. *Conway*. I have it, out of another Estate.

Mr. *Goffroy*. What are the rents of the Estate you have secured for the Payment of this money?—Mr. *Conway*. Between 3 and 500*l*. a Year.

Mr. *Goffroy*. Is that your Compensation, or is it let at so much now?

Mr. *Conway*. I can't say it all let; there are some Demolitions.

Mr. *Goffroy*. What are the Rents of that Part of the Estate that is let?

Mr. *Conway*. I take it to be 500*l*. a Year.

Mr. *Goffroy*. What, let at 500*l*. a Year?

Mr. *Conway*. Yes, or thereabouts.

Mr. *Goffroy*. Do you reckon the whole Estate to be worth 500*l*. a Year?

Mr. *Conway*. No, I don't reckon in the whole Estate, but only that which is conveyed for the securing of this money.

Mr. *Goffroy*. I desire to know what are the Rents of this Estate as it is let?—Mr. *Conway*. I take it to be 500*l*. a Year, or thereabouts that is applied for, and as a Security to answer my Deficiency.

Mr. *Laws*. This 13,000*l*. Balance is due to the Surors, which he says is secured by that Estate: I would be glad to know how the Deficiency came, and what is become of this 13,000*l*. that is due to the Surors?

Mr. *Conway*. The Occasion of it was, my coming into the Office call'd to my Predecessor 6000*l*. I paid him 5000*l*. upon my Admission, and 500*l*. Contribution towards making good Mr. *Dennis's* Deficiency.

Mr. *Goffroy*. How was he rais'd of the Debt of 6000*l*? You had rais'd it by about 3000 Pounds.

Mr. *Conway*. I believe I might, upon Account of my Brother, before 1500 or 2000*l*. as finally he was it to the Crown.

Mr. *Serj. Pynell*. Out of what Cash did you raise it?

Mr. *Gos*. I believe it might be out of the Office.

Mr. *Goffroy*. What is become of the rest, now you say you can't say much due among my Acquaintance; I believe I can.

Mr. *Conway*. I don't think you need your Acquaintance out of the Office.

Mr. *Gos*. I believe I might at Times lend Effects out of the Cash that remained dead and unemploy'd, and because I apprehended it was scarce.

Mr. *Goffroy*.



Mr. Ogden. You say, you have lent to several of your Acquaintance out of the Suitsors Cash; I would have you name any one Person to whom you are lent any of the money of the Office?

Mr. Ogden. I remember a noble Person, if it is proper to mention his Name, to whom I have lent 200*l*. he is now dead.

Mr. Serj. Prager. I don't know whether your Lordships will not be pleased to confine the managers to examine only the particular Articles they are now on.

Mr. Ogden. We are now upon the Article of the Deficiencies, and the Office hath been asked by the Council for the noble Lord, whether this Deficiency can be made up, by Mr. Conway? Therefore it is proper to know, whether this Deficiency is likely to be made up, and to know what the money is, and therefore I would ask who this five-and-twenty hundred Pounds was lent to?

Mr. Serj. Prager. My Lords, I submit it whether that Question be proper, because Mr. Conway hath given Lord Security to make good this Deficiency; and therefore it is not material for your Lordships Judgment, to enquire how this Deficiency happened.

Mr. Lushington. I am very sorry to lay before your Lordships the Reasons and the Order upon which he was committed. I appeared at the Council's request upon this Point, and sendeth from what the Council for the noble Lord have entered into themselves; for they have asked, whether he was able to make good his Deficiency? Now is it not proper for us to ask the parties at Conscience to find out the Truth, who he is or is not? Therefore I beg leave to ask one Question, not waving the other, whether he hath assigned over all his Debts that he could, to make good his Deficiency?—Mr. Con. I have assigned over all my real Estate.

Mr. Lushington. Whether he hath assigned over this 200*l*. due to him?

Mr. Con. That is applied.

Mr. Lushington. How?—Mr. Con. Applied amongst my Causes.

Mr. Lushington. Did he lend a Nobleman a sum of money, and apply it to a Cause?

Mr. Con. That sum of money you were pleased to enquire after, I applied to a Cause.

Mr. Ogden. He had he lent a sum of money, &c. I define he may be asked, who this 200*l*. was lent to?

Mr. Con. I was applied to by a Nobleman to lend him the sum of 200*l*.

Mr. Ogden. By whom was you applied to?

Mr. Con. By my Lord Bailiwick, and accordingly it was advanced to him, and it is since applied in a Cause.

Mr. Ogden. Applied, How?

Mr. Con. Applied to a Cause, with the Approbation of the Parties.

Mr. Ogden. Hath it been repaid?—Mr. Con. No, it is applied in a Cause of a Sutor, and now it remains an Security.

Earl of Abington. I am so nearly related to this noble Lord that is mentioned, that I must do that Justice, as to put Mr. Conway in mind, as I did Mr. Hawks before, that at any Question is asked him, which may personally reflect him to any Penalty, or as he hath the Bar-Gown, may concern his Client, he ought to be left to his Discretion, whether he will or will not answer.

Lord Lushington. A Person is not obliged to answer any Thing that may criminally affect him; but where the Enquiry is after a Debt, in order to explain his Cash as to this Sufficiency, which is the matter of Debate, surely that is material, and ought to be answered to, and I desire to be informed, whether this 200*l*. which he said was lent this noble Lord out of the Sutors money, was repaid to him by my Lord Bailiwick, and when?

Mr. Con. It is not repaid. It is applied in a Cause; the Parties have approved of it as a Security.

Lord Lushington. When was this money in the Hands of my Lord Bailiwick applied to the Benefit of any Sutor, and by what Order of Authority?

Mr. Con. It is some time since, three months ago, five or six months ago.

Lord Lushington. Was this by any Order of the Court of Chancery?

Mr. Con. No, my Lords, by the Approbation of the Parties.

E. of Abing. My Lords, if you please to give me Leave, I would suggest something that possibly may help towards the better understanding him. If any Goods be right, that relates to his Post-Account. He hath said his Charge is 13,000*l*. And he hath said, he could discharge 2000*l*. or more, of that Balance by a Post-Account; now I apprehend this he is speaking of now, is that Article of the Post-Account. I don't know if I quite hit his meaning right, but I desire he may inform your Lordships, in case it be so.

Lord Lushington. It may be for your Information to know who are the Parties to whom this is applied, that it may be known whether it is as the Post-Account or not?

Mr. Ogden. My Lords, we desire first to know what Security my Lord Bailiwick gave?—Mr. Con. He gave a Bond and Judgment.

Mr. Ogden. Who is it you have applied the Security to?

Mr. Con. It is in the Cause of *Rowley contra Fawcoker*.

Mr. Ogden. Do you reckon that Part of the 13,000*l*. now deficient?

Mr. Con. No, I do not reckon it in that sum.

Mr. Ogden. Your Lordships will please to recollect, that his Deficiency is 13,000*l*. We ask him how that Deficiency came; he hath given your Lordships an Account of 10,000 odd hundred Pounds; and said said the Residue was in the Hands of his Acquaintance, and named 2000*l*. money of the Sutors to be in the Hands of my Lord Bailiwick; now he hath this last sum is not Part of the 13,000*l*. Therefore now I would ask, how the Remainder of his deficient money was applied, or how the Debt happened?

Mr. Con. If my Lords will please to give me leave to explain it: As to the Remainder of the 13,000*l*. you have been pleased to reckon 10,000 odd hundred Pounds to be made out; then there is 2000*l*. odd money I have lent in Land, which I have since conveyed, which makes 12,000 odd hundred Pounds; and the rest I have in Bonds and Notes, which I have to make up the Residue.

Mr. Lushington. I define he may be asked, whether he hath those Notes, and they are ready? I define to know, whether they have not been paid into the Court to make up his Deficiency?—Mr. Con. No, I humbly hope to have it allowed me by your Lordships, being applied in the certified Cause and Approbation of the Parties.

Mr. Ogden. We have done with him; and leave him to your Lordships Discretion.

(Mr. Thompson called.)

Mr. Serj. Prager. My Lords, we beg leave, that Mr. Thompson may give your Lordships an Account, upon the last Article and Enquiry some of those Accounts, how much the Deficiency of the several Masters amounted to?—Mr. Thompson. So much as the several Masters flood charged with by their own Accounts, and did not lack up or produce proper Securities for, I account a Deficiency; and by this Rule I have collected the Deficiencies of the several Masters, from the Reports made to the Commissioners of Council.

Mr. John Burre's Deficiency amounts to *£* 17,541. 13. 10.

Mr. Conway's Deficiency in Cash only amounts to *£* 10,030. 4. 4. 2. but Mr. Conway's Accounts, while his Accounts were under Examination, held 2000*l*. Spanish Sea Annuity, and 3300*l*. South Sea Stock; and of the Money assigned thereby, he paid to the Sutors, to whom said Annuity and Stock did belong, no more than *£* 1591. 9. 3. so that his Deficiency is increased by the sum of *£* 3559, taken what more of left, according to the Price he sold at.

Mr. Serj. Prager. Was what he sold Part of the Suitsors Security?

Mr. Thompson. Yes.—Mr. Burre's Deficiency amounts to *£* 10,000. 1. 3.

Mr. Thomas Burre's Deficiency amounts to 997*l*.

The Charge that remained upon Mr. Burre's Office, amounted to *£* 50,000. 10. 12. But Mr. Burre and Mr. Ogden, the Masters, who had the Care of his Effects, gave in a true Opinion before the Judges and Directors, that the Effects he left would produce 44,000*l*. and upwards; so that I compute the Deficiency of Mr. Burre's Office to be *£* 12,597. 10. 12.

The total Charge upon Mr. Burre's Office, when he signed to Mr. Edwards, amounted to *£* 49,004. 12. 12; but Mr. Edwards has paid, in Discharge of that sum, the sum of *£* 23,725. 14. 9. so that the Deficiency of Mr. Burre's Office amounts to *£* 25,278. 10. 12.

Mr. Serj. Prager. Whether in that Mr. Burre's and Mr. Burre's Security included in Burre's Account?

Mr. Thompson. Mr. Burre's Deficiency I take to be *£* 25,278. 10. 12. and the whole Deficiency I take to be *£* 105,043. 17. 12. And if any Securities or Sums of Money belonging to the business are omitted in the Masters Accounts, such Securities and Sums are not included in this Estimate.

E. of Abing. Have you had before you the Administrator, either of Mr. Burre or Mr. Burre?

Mr. Serj. Prager. My Lords, we shall be glad to call our Witnesses to see your Lordships an Account of another Deficiency of 2000*l*. upon Mr. Conway, which is not charged in his Account. We desire that Mr. Saunders may be called.

(Mr. Saunders sworn.)

Mr. Lushington. We desire that Mr. Saunders may give your Lordships an Account of any money in Mr. Conway's Hands, and how much it is, that is not brought to Account?

Mr. Saunders. My Lords, I was concerned as a Solicitor in a Cause in Chancery, between Sir *Erasmus Norrell* and *Annelle Norrell*, both after the Accounts were brought into the Register's Office, I went to look and see if Mr. Conway had charged himself with a sum of money paid in that Cause; I found by an Account that it was not charged. I had drawn up the Account, and given a Copy of it to Mr. Conway, which he did not deny, but he said, there was not so much by a 200*l*. And I, there is an Entry at all of the Cause, and no mention of any sum. I told him, it was an Omission not to mention the Cause of sum. He said, that he believed it was not so much, he did therefore not mention it. I said, how may he be so ignorant how much it was as he thought it? He said, because he would say all.

Mr. Serj. Prager. We desire he may be asked, how much the whole money in that Cause was?—Mr. Saunders. *£* 1274. 8. 1. besides Interest from Lady Day last was Twelve-month.

Mr. Serj. Prager. This is the sum of the Account we had to lay before your Lordships at the Deficiency, notwithstanding the Masters represented themselves as able to pay the whole. We would not represent it to your Lordships that this will certainly be the Loss, because some of the Masters have given Security to meet Part; though we apprehend the Security given will not be sufficient to help.

E. of Abing. I desire to ask Mr. Thompson, whether that Charge he makes upon Mr. Burre's Office be a 200*l*. taken from the Office, or only an Account taken from Mr. Burre's Office?—Mr. Thompson. The Charge was taken from the Voucher which Mr. Burre produced.

E. of Abing. Are there any Payments allowed made by Mr. Burre in his Life-time?—Mr. Thompson. A great many.

E. of Abing. Who gave you an Account of that?

Mr. Thompson. Mr. Alder, my Lord.

E. of Abing. But I speak of the money paid by Mr. Burre himself, not what Mr. Alder paid. Have you any account what Mr. Burre paid out himself?

Mr. Thompson. The Account we had of this was from one Mr. Parker, as I think his Name was, who was Clerk to Mr. Burre. He produced several Receipts for the sum paid; And the Masters in Chancery, who had the Care of Mr. Burre's Effects, allowed the Books and Papers produced by Mr. Parker, and he the Books and Papers belonging to Mr. Burre's Office.

E. of Abing. As to the Effects belonging to Mr. Burre, who gave you the Account of them?—Mr. Thompson. Mr. Burre and Mr. Ogden.

E. of Abing. Do you know who is Administrator to Mr. Burre?

Mr. Thompson. I have heard that Mr. Parker is.

Mr. Nicholas Paines. Yes, my Lord, I took out Administration to Mr. Burre about the middle of April last.

Lord Lushington. I desire to ask Mr. Thompson, whether the Comparison be hath made of the several Deficiencies, and among to an hundred and five thousand Pounds, taken from the voluntary Accounts of the Masters delivered in, or whether any of the debts were concerned in those Accounts, or have been parties to such Comparison?

Mr. Thompson. From the Masters voluntary Accounts only.

Mr. Serj. Prager. I beg leave to ask Mr. Ogden, whether any of the Questions, which the Lord within the Bar is now asked in, and then Mr. Ogden and Mr. Burre were not the Masters that appeared?























our Evidence, you will be pleased to acquit him of all the

Articles have been co-vised with the great Constitution, and with the great Art, heightened with every Circumstance that makes Reason, and urged against the Noble Earl in the most judicious manner, well becoming the great Concern which should engage those for what they ascribed to the Public Service, and the great Discharge of the great Trust reposed in them by us.

Another Observation was made by one of our learned Gentlemen of the House of Commons, in relation to their general Charge, which is to charge, that the Earl, in or about 1745, One thousand seven hundred and eighty, by the good Grace and Favour of his Majesty, was con-

They are grafted on to the Government, which broke, as an offence the deepest Dyak, which makes at the very Root and Foundation of all Government; and, to render it more clear, it is introduced as an Act



the highest Regard to his Majesty, as well as injurious and oppressive to his Subjects. To demonstrate this, it is represented, that upon the said Earl's being appointed Lord Chancellor, in May One thousand seven hundred and eighteen, his Majesty was pleased, of his Grace and Bounty, to bestow upon him the Sum of fourteen thousand Pounds in Money, and to bestow him several other yearly Pensions and Payments, which another Gentleman (in observing the Evidence given on this Head) was pleased to say, did, together with the usual Salary, Fees, and Profits belonging to the Office, amount unto near ten thousand Pounds per Annum, and this was strongly urged as enough to satiate the Appetite of the most Avaricious, and prevent any illegal and corrupt Excesses of other Sums from his Majesty's Subjects.

To this, My Lords, we hope your Lordships will think the noble Earl has put in a very plain and satisfactory Answer.

That he had, for several Years before his Advancement to the Great Seal, the Honour of serving his Majesty in the Office of Chief Justice of the Court of King's Bench; and as a Reward for good and faithful Services in that high Office, his Majesty, out of his Royal Grace and Favour, upon the 10th of March, One thousand seven hundred and fifteen, was pleased to advance him to the Dignity of a Peer of this Realm; and for the better Support of that Honour, to grant him the Pension of twelve hundred Pounds per Annum, and to bestow upon him the Royal Intimacy of giving the said Earl's eldest Son an Office of considerable Profit, when Opportunity should offer.

That in May, One thousand seven hundred and eighteen, his Majesty was pleased to appoint him Lord Chancellor; on the 24th of the said Month of May, he took the usual Oath of Office, and at the same Time the Oath of Supremacy and Allegiance, and no other Oath of Office.

That during the Time he continued in the Office of Lord Chancellor, he enjoyed the usual Salary, Fees, and Perquisites, which Mr. Payton (who was called as a Witness to this Particular) proved to be about eleven or twelve hundred Pounds per Annum.

That his Majesty also granted to him the Salary of four thousand Pounds per Annum, during his Continuance in that Office; which was not particular in his Case, but constantly granted to, and enjoyed by all his Predecessors.

That to this, his Majesty was further pleased to sign a Warrant to him for fourteen thousand Pounds, as mentioned in the Articles, whereof two thousand Pounds was the usual Allowance to other Lord Chancellors, or Keepers, towards the Expenses in entering upon the Office; and the rest was his Majesty's Royal Majesty, and received as his own.

The Noble Earl likewise admits, that his Majesty was also pleased to grant him only ten, then going to travel, a yearly Pension of twelve hundred Pounds, determinable upon his Majesty's granting him one of the Offices of Teller of the Exchequer for Life; which was accordingly granted; and he came into the Possession of it, in One thousand seven hundred and nineteen, whereby that Pension determined; so that the yearly Payment to his Lordship was but for thousand four hundred Pounds per Annum, besides the Pension of twelve hundred Pounds to his Son, which soon after determined upon his coming into Possession of his preferment Office. This is all the Revenue which the Noble Earl received during his Continuance in this great Office: And, I humbly presume, this can't be thought excessive, considering the great Fatigue, Diligence, and Expenses, that necessarily attend the Execution of this high Office: Perhaps other Offices might be found, that are less difficult in the Execution, and yet superior in Profit.

But, my Lords, the Objection does not seem to turn that way; but rather, that this Noble Lord, not contented with these several Incomes of Royal Grace and Bounty, illegally, corruptly, and excessively took and received other great Sums from other Persons in his own Life.

This the Noble Earl expressly denies, and says, That during his Continuance in the Office of Chancellor, or at any other Time, he never once had a Deeds or View, or even a Will, to raise to himself any exorbitant Gain or Profit, much less to extort Money by any unjust or oppressive Methods whatsoever.

And indeed, my Lords, this is a Charge that gives the Noble Earl at once the greatest Trouble and Surprize; he never suspected a Crime of this Sort, to contrary to his Nature, and the whole Tenor of his Life, could ever be objected to him: And to prove that this was not any Foundation of Truth, the present Circumstances of his Family and Fortune (when last before your Lordships) will abundantly demonstrate and convince Mankind, that he is not that rich, that avaricious, and corrupt Man, he is represented.

As he has received large Bounties from his Majesty, he has been abundantly liberal to Persons that were proper Objects of Charity; and his Purse has been always open to succour and relieve the Distressed.

This, my Lords, brings me on to the material and principal Part of the Charge, which is, That he did illegally, corruptly, and excessively take and receive to his own private Use great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

The Inferences given of this corrupt taking of Money refer to the several Sums mentioned in the five Articles, which the Gentlemen of the House of Commons were pleased first to enter upon, and which relate to the several Sums of Money received from the four Masters in Chancery, mentioned in the fifth, sixth, seventh, and eighth Articles, and the Clerk of the Chancery mentioned in the ninth.

If the Charge contained in these several Articles be a Crime, it must appear to be so in its own Nature; to be an Offence at Common Law; or made such by some Act of Parliament. I submit it to your Lordships, that taking a Profit, or taking Money from Persons upon their Recommendations or Nominations into Offices, though they do concern the Administration or Execution of Justice, is not a Crime in its own Nature, it is so an Act of Intemperance, or a no Act of Injustice to any Man; for no Person has any particular Right to that Office, but his Advancement must be owing to the Favour or Friendship of him who has the Right and Power of Nomination: And if the Office itself be valuable, so is the Right of Nomination to it, and may be esteemed as Part of the Price or that Person to whom it belongs. And if we consider it in this Light, I think it can't be denied but that every Man has a natural Right to dispose of his own Estate or Interest, his own Friendship or Favour, upon what Consideration he pleases: It is his own, and therefore he has a Right to make any just and legal Advantage of it.

From hence, my Lords, I would beg leave to infer, that the taking of Money from any Person, upon his Recommendation to one of these Offices, is not criminal in itself, if legally considered, and depends from the Good or Evil Consequences that possibly may attend the same.

And, in the next Place, I humbly submit it to your Lordships, that it is not a necessary Consequence, that every one that buys a Commission will be himself either selfishly or corruptly in it. Honours may be given, and those very ancient ones, of Offices of Justice, of the highest Character in the Administration of Justice, may have been purchased, and purchased from the Crown.

In Mr. Addison's History of the Exchequer, Page 43, we find that in the Time of Henry the Fifth, and Edward the Fourth, it was usual, that he might sit with Ralph Bagot to hold the King's Pleas in the Court. Here we see one of the Justices of the King's Bench purchasing an Office for fifteen Marks in Silver.

And in the same Page of the said Book it appears, that, in the first Year of King John, Walter de Grey gave the King five thousand Marks for his Office of Constable of the Duchy of Normandy, and for his Office of Justiciar.

Thus, my Lords, are great Influences what the ancient Usage was, in purchasing even the highest Offices of Justice.

Inferior Offices were doubtless disposed of in the same manner; and this had been thought criminal, I should have had some Influence in our Law-Books, wherein they would have appeared to have been adjudged.

I beg your Lordships leave to consider in the next Place, and this is briefly, whether this can be taken to be criminal within the Words of the Statute of Edward VI. which has been taken Notice of by some of learned Masters.

By the 13th and 14th of Henry VI. c. 16, it is Enacted, That if any Person or Persons shall at any Time bargain or sell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which shall in any way tend or concern the Administration of Public Justice: And also every such Person and Persons that shall in bargain and sell, or take any Money, Fee, or Reward, for such Office or Offices, shall in a only lose his Right, Interest and Estate in such Office or Offices, but every such Person and Persons that shall give or pay any Sum of Money, Reward, or Fee, shall be adjudged to be defamed in the Law, to have, receive, and enjoy the said Office or Offices.

This is the Force of this Act of Parliament, so far as it relates to the Offence charged in these Articles; and I apprehend it cannot be extended to the present Case.

Here are no prohibitory Words that Persons shall not bargain and sell Offices, nor any Words declaratory that they could not do so before, by Common Law.

And all Penal Laws are to be construed favourably for the Benefit of the Subject, and not extended beyond the Letter.

But, on the contrary, by the many Provisions after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and sold without Offence; and many Offices are authorized and intended, by the express Provisions of this Act, to continue to be bought and sold for the future.

For by the first Provision in this Act, it is declared not to extend to any Office of Inheritance, which is an express Declaration that Offices of Inheritance were to be bought and sold even after the said Act should take place.

The second Provision I apprehend is stronger to our Purpose; for by that it is declared, "That this Act shall not extend to any Contract made or agreed to before the first of March then next, but all such Bargains and Contracts made on or after that Day." And, my Lords, there is yet a further Provision, "That this Act, or any Thing therein contained, shall not extend, or be judicially or legally applied to any of the chief Justices of the King's Courts, commonly called the King's Bench and Common Pleas, or to any of the Justices of Assize, or now be, or hereafter shall be, that they and every of them may do as in every behalf, touching and concerning any Office or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act, any Thing therein contained to the contrary thereof notwithstanding."

What is this but that great Officers of Justice might have done before the making of this Act? They might have given, granted, bargained, or sold the respective Offices under them in such manner as they thought fit; and by this Provision they may continue to do so still.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Office created, but a particular Penalty given, to be inflicted on all that shall buy or sell Offices, not contained in any of the foregoing Provisions; that is, the Contract made between the Buyer and Seller is declared void. The Party selling loses his Estate and Interest in the Office, and the Party buying is rendered incapable to hold and enjoy it.

In Caple's Code, Co. Jac. 144, it is adjudged, That when a Statute appoints a Penalty for doing a Thing which was no Offence before, and appoints how it shall be recovered, it shall be punished by that means, and no other.

Therefore, my Lords, in the present Case, supposing that the Provisions passed to be sometimes made to the impeached Earl, upon the Nomination of Masters in Chancery, can be interpreted a selling of an Office, or taking Money for an Office, within the Intension of this Act of Parliament, it can be liable to no new Penalty than what the Act itself directs; and that the Noble Earl has already suffered by his Loss of the Great Seal. The Statute inflicts a Penalty upon the Seller of an Office, only Penalty or Punishment ought to be inflicted by virtue of this Act of Parliament; and consequently the Offence, as now charged against the Noble Earl, and the Facts, as proved before your Lordships, cannot subject him to any Punishment or Judgment, that can be prayed in this Prosecution, upon the present Articles of Impeachment.

But, my Lords, there is another Answer, which the Noble Earl has been pleased to make to this Part of the Charge against him, and which I hope your Lordships will have great regard to.

It is an Example of the many great and learned Persons who have preceded this high Office before him.

The Precedent is too ancient, for us to dissent when it was first made!



and I humbly submit it to your Lordships, that the immemorial, constant Usage and Practice of it in all Ages past, will sufficiently establish the Right and Justice of the Precedent.

The same Objection, which is now made against the Noble Earl imprisoned, in this particular Instance, might undoubtedly have been insisted upon against every one of his Predecessors.

And I could not well be able to prove, that those Officers have made Presents to the Great Seal, as frequently and constantly as the several Vacancies have been supplied.

This noble Lord has only followed the Example of his Predecessors; he has trodden in their Steps: And I must beg leave to say, There must be something peculiar in his Case, if the same Paths, which led them to Ruin and Immortality, shall betray him to Infamy and Disgrace.

This Objection, my Lords, some of the learned Managers of the House of Commons were well aware of; and therefore they have endeavoured to distinguish the present from the preceding Cases.

They admit it to be true, that small Sums have been formerly given, and accepted by former Chancellors, upon Admissions into their Offices, and by way of Compliment or Present, and this without a Crime: But then they urge, that the Sums now complained of are exorbitant; they are ungenerous, haggled for, and given unwillingly by the Purchaser; and that there is a great difference between a Present given, and a Price bargained for and paid.

My Lords, I can't deny but that this Distinction is just: A Present implies a voluntary Gift of something left, than the Value of the Thing given, possibly less, or more, than the extent is to be made; a Price, the full Value of the Thing contracted for.

And I think the Earl's present Case is exactly within this Distinction, and justifies the Earl's Answer to this respect.

The Present which Mr. Kynast made to the Earl, upon his Admission, was One thousand five hundred and seventy-five Pounds. The Price he paid Mr. Rogers for the Purchase of his Office, was no less than six thousand Pounds.

The Present which Mr. Thomas Brent made to the said Earl, upon his Admission, was One thousand five hundred and seventy-five Pounds. The Price he paid Mr. Hunsley for the Purchase of his Office, was seven thousand five hundred Pounds.

Mr. Edm. upon his Admission into the Office, upon the Death of Mr. Folmer (the former Master) made a Present to the late Chancellor of five thousand two hundred Pounds. But when his Lordship conferred the Greatness of the Sum, he returned him all but eighteen hundred Pounds. And at the same time Mr. Leas offered for the same Office.

Mr. Thynne has also proved, that he left Bank-Notes to the amount of five thousand two hundred and fifty Pounds, folded up in a Letter at the Earl's House, before his Admission, upon Mr. Brent's Death. But when the Lady, to whom the Letter was directed, discovered how great the Sum was, she, without any Application made to her for that Purpose, returned all but two thousand Pounds.

And this, my Lords, was done before the Seal, before Misdemeanours taken fall, before the Matters were ordered by the Privy-Council to give in their Accounts; and when the present Prosecution was not in any yet apprehended: And it is likewise proved, That Mr. Leas, upon this Occasion, received his Office of Six thousand Pounds for the Office; and Mr. Thynne was admitted for a less Sum of money.

These, my Lords, we humbly hope and insist, are not Influences of a corrupt Mind, an avaricious, rapacious Temper, such as some of the Gentlemen Managers have been pleas'd to represent them. On the contrary, we humbly hope, that, upon the Evidence already given, it plainly appears, that these Payments were not Sums of money extorted and unlawfully paid by the Gentlemen, who were admitted into the several Offices that have been mentioned, but Presents voluntarily made, and paid upon the Earl's impeachment, with such Application and earnestness that shews, that, at the Time they were offered, the Persons offering thought they were not equal to the Value of the Favours they expected. And their Importunity was so great, that Mr. Thomas Brent one of the present Masters, that has been so often examined, would endure no delay, but immediately resolv'd to be sworn into his Office, at a time when the late Chancellor was sick, and by his Physician thought to be dying. This may rather be said to be extorting a Favour from the respected Earl, than money from Mr. Brent, as it was upon his own Evidence.

My Lords, We do humbly insist, That as the noble Earl within your Bar was not conscious of any Crime in accepting these Presents, so he is justified in so doing, by the Example of many Successors of great and learned Men, who have done the same in the like Case. And should this now be adjudged Criminal, what Numbers of very good and just Men must be involved in the Imputation of this Guilt? It must necessarily spread its universal Cloud of Infamy and Reproach over the Aides of many just and upright Sages of the Law, whose Memorials have hitherto been preserved as venerable and sacred; Men who deserv'd Riches, and abhorred the vilest appearance of Bribery, and were, were not suspected to be corrupt: yet these Men thought it just Duty, owing to themselves and Successors, to adhere to the known and just Rights, the ancient established Forms and Perquisites of their Office; and believe'd it as justly due to them in the Salaries which were annexed to their said Offices.

My Lords, We shall beg Leave to shew that this has been the ancient Usage and constant Practice of all Ages, and the several great Persons, who successively have presided in the greatest Courts of Law and Equity, from the earliest Times to the present, have dispos'd of the several Offices in their Gifts, as they became vacant, for money.

Frequent Instances of this kind will be produced before your Lordships, on our Evidence.

My Lords, I would not be understood to mention this, so as to insinuate that the Admits or Examples of the greatest Persons will alter the Nature of Good and Evil, or give a Sanction to any Action that in itself is really Criminal; but only as an Argument (and I apprehend it a very strong one) to prove, that it was the concurrent Opinion of all those Great Persons that have been Presidents, upon their Dispositions of Offices, that it was not criminal to do so.

The Opinion and Judgment of so many learned Persons must carry very great Weight in a Case of this Nature: And if in strictness it can't be said to justify the Admits, it will certainly very much Exculpate the Guilt.

In the next place, the Gentlemen are pleas'd to proceed to shew, That Masters in Chancery, being, as before represented, very great Officers in that Court; the noble Earl within the Bar, for his own corrupt Gain, has admitted Persons into that Office that were not duly qualified for such Places, and forced them to give great Prices, and bawled and haggled for such Prices.

This, my Lords, is urged as the greatest Inconvenience, That Men who have no Substance of their own should be trusted with such large Sums of other Persons Money.

It is insinuated, That honesty, Probity, and good Substances, are absolutely necessary for the Sutors Security, yet inferior Persons have been put in by his Lordship, who had little or no Substance of their own. That they paid great Sums for their Places, yet paid at out of the Sutors money, and that this was known, conniv'd at, and encouraged by the noble Lord that then presided in the Court of Chancery. This therefore could only be with a view to enhance the Price of their Places: For what would not People hazard, who had nothing of their own to lose? If any Profit could be made, it was their own; if any Loss, the Sutors; for no Security was given to answer the Effects in their Hands.

My Lords, It will be confess'd, that this way of Arguing has a very popular Appearance, and finds an easy Access to every Ear.

The Court of Chancery must be admitted to be the greatest Court of Justice in the Kingdom: And it must be also admitted, That the Business of that Court has of late Years increased, in Proportion, more than any other Court; and consequently, much greater Sums of money are now deposited in the Hands of the Masters of that Court, than formerly.

This may possibly make it to be wished, that some better Method might be found out, for the Sutors Security, than has been formerly used.

But in what Manner this Reformation is to be made, is beyond the Power, or at least the Prudence of any one Judge or Chancellor to determine; the ancient Practice of every Court is the Law of that Court; and it would be a dangerous Experiment for any one presiding Judge to vary it: If any ill Consequences to the Sutors attend such an Alteration, he that made the Alteration would certainly be answerable for the Consequences of it, for every Sutor will then say, Why was the ancient Practice vary'd? He that made the Alteration surely did it for his own Advantage; and if any Argument that the present Case is only colourably made use of, in that would be obvious and natural, and be apply'd with double Force.

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts against Precedent, against ancient, concurrent, uniform Precedents and Practices, is without excuse, and justly to be suspected of some particular View, in the Language of the present Division.

The Earl of Mansfield, when he was first intreated with the Great Seal, found the Sutors Money in the Custody and Care of the Persons who were then Masters of the Court, and without any Security given or demanded for it.

He consider'd that his Predecessors were a Succession of Great and Honourable Persons, of equal, if not greater, Sagacity and Learning, Probity and Experience, than any that ever had sat in any Court; they found the Masters in possession of the Sutors money upon the same Establishment, and they left them so.

Was it proper or prudent for him to oppose his single Opinion to the united Judgment of so many wise and great Men that had gone before him? Surely, no. Inconveniences had been seen before, and Deficiencies had happened, and these Deficiencies had been supply'd by a voluntary Contribution of the other Masters then in Being. Why was not Security then demanded? And why not all the other Masters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, it may be, possible to be so; at least upon the single Authority of one Lord Chancellor. And that therefore is a good Excuse for the Omission or Neglect in that Particular in the present Case. But, my Lords, It is now objected, That as the Sums of Money in the Masters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Masters receiving and keeping it for the Sutors Benefit, yet greater Care ought to be taken of the Persons to be admitted Masters, upon Vacancies and Resignations. And therefore another part of the Charge against the Honourable Earl impeach'd, is, That he appointed Persons to be Masters of the Court, that were not proper or sufficient either in Substance, Knowledge, or Probity.

These are said to be all essential Requisites in the Character of every good Master; but grossly neglected in the present Case: And a Reason is given, as (if I am not mistaken so by) rather obscure, in the present Case, that it was the Advantage of the Earl impeach'd, to put in such unequal Persons; because such Persons would be driven to give larger Prices for their Places, and consequently is redounded to the Earl's Advantage.

My Lords, I must beg leave to observe, that in the Evidence that has been given, there has not been any one Instance proved (or at least, that I can recollect) that any of their Masters were really insufficient in any of the Particulars objected to, at the Time of their respective Admissions into their several Offices, or, at least, that the noble Earl impeach'd then knew that they were insufficient, or had any reason to suspect so: They were all Gentlemen of good Families, well Educated, such of them a Barrister at Law (which, I submit to your Lordships, is not the least extensive Education), and had all suitable Fortunes, and appear'd as Persons in very plentiful Circumstances.

Even Mr. Conway and Mr. Thomas Brent (who are the Persons intimated to be the least qualified as Point of Fortune and Substance) had at that time very good Estates in their Possessions; Mr. Brent had then also a very valuable Office, Clerk of the Callouses; had married a Lady of considerable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir John Lubbock, the younger Son; and the whole Family then seem'd to be in a very prosperous Condition. Mr. Thomas Brent has proved to your Lordships, that he was worth twenty thousand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever informed of any Inconveniences upon his Estate (tho' now, he says, there are great ones), or that his Circumstances were less at the Time of his Admission, than in the Year 1720. Surely then the late Lord Chancellor







In February, 1725, the late Lord Chancellor (finding Mr. *Dorner's* Deficiency like to be greater than in first it was apprehended) was willing to take into the State of the Accounts of the other Masters, to guard against the like Misfortune; and at the same time proposed to them to advance by him to pay Mr. *Dorner's* Deficiency. Five hundred Pounds-a-piece is raised by nine of them, and applied accordingly; the said five hundred Pounds paid in August, 1725. And upon the 27th of November, 1725, a second Letter is written to settle their Accounts, and a very Argument which that could be thought likely to induce them to it. But the Letter proved too difficult, and the Parties were forced to be given over 'till a more convenient Time and Opportunity should present. What was done in this Intermittent Life, I beg leave to say briefly, was following the Example of another Great Man, in the Method he took in the Case of Dr. *Eddisbury*, and that has some Circumstances less agreeable than the present. Dr. *Eddisbury* was always in Town, or at least within the Reach of Power of the Court, and yet his Person was not secured for many Years after his first Failure.

Upon the 29th of January, 1726, there is an Order entered in his Case, (the only one we can find of the Fr.) for Dr. *Eddisbury* to deliver up his Effects to the two Senior Masters: It recites, That Dr. *Eddisbury* had several Sums and Securities for money in his hands, and that several Orders had been made for money out of his Hands, which were not complied with, and that he declared himself not able to pay, and that his Accounts given in were not full: It is therefore Ordered, That in four Days time after Notice, he do Account to the several Masters, and deliver up to the said Masters what he hath in Hand, and the Report to be taken in ten Days.

My Lords, By this Order it appears that Dr. *Eddisbury* had several Orders made upon him for money to be paid, not in Average, for some Time, and that Order not complied with; and that he had an account of his Administration, and had given several Accounts; yet the all Extremity, the committing his Person, and ordering Payment to be made, was not thought of, 'till it was certainly known, and he had actually refused, that he had not Assets to pay the Whole.

In the present Case, Mr. *Dorner* was examined, discovered his Effects, alleged the Whole as Trust for the Suitors, but just before the Enquiry could be perfected.

In Dr. *Eddisbury's* Case, the other Masters constituted at first to supply his Deficiency, as they faced did in the Case of Mr. *Dorner*: And thus without doubt was to follow, in hopes that his Effects, who fully disclosed, would in time prove sufficient to answer all, or even the greater part of the Suitors Demands: And that far both Cases are parallel, and Orders made for Payments to the respective Suitors in general, as they applied for them. And an Average was directed in the Case of Dr. *Eddisbury*, 'till it appeared, even by his own Confession, that his Assets were not sufficient to make good the Suitors whole Demand: And when the opinion of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the present Case: But that could not possibly be done 'till the Value of Mr. *Dorner's* Effects could be known and ascertained, in order to fit the Proportion to be paid, in Average. And this, my Lords, in this time, through the many Accidents before-mentioned, it has not been possible to effect: And therefore, the not directing Payments in an Average, can't be reasonably objected to the present impeachment of Lord as Criminal: His Intention throughout the Whole appears to be calculated for the alone Service and Benefit of the Suitors of his Court, without any Prospect or Possibility of Advantage to himself. His Design was to procure every Suitor full Satisfaction for his Demand: And if nothing had happened to interrupt to just a Design, 'tis possible that his great Zeal for the publick Good, and his indefatigable Industry, might in due time have had their desired Effect.

My Lords, Your Honours have now interposed, and this Difficulty being found to exceed the single Authority of a Chancellor, may be thought to define the greater Power, Care, and Wisdom of the Legislature.

My Lords, What afterwards happened in the Case of Mrs. *Glitty*, is in part answered, in what has been observed upon the last Article; and I humbly apprehend, that a plain Narrative of that Fact, will be a sufficient Answer to the objection that has been made in this respect. The Earl of *Mansfield* having no certain Account what Cash of Mr. *Dorner's* remained in his Successor Mr. *Edwards's* Hands, made Orders for payment of Sum of money, from time to time, as Application was made in Court, and particularly to pay him thirty One thousand Pounds, part of greater Pounds than he now interposed, and this Difficulty being found to exceed the single Authority of a Chancellor, may be thought to define the greater Power, Care, and Wisdom of the Legislature.

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even from this Instance, and from the whole Series of this noble Lord's Conduct, that he can believe that all the Suitors of the Court, as well, in Actions, be made easy, and their whole Demands be made good to them. And had the whole Body of the Masters as cheerfully concurred in this good Design, and contributed as generously to support the Honour of the Court, and their lives, 'tis more than probable that the Suit would not long have had any just Occasion of Complaining, nor your Lordships the Trouble of this Preface.

It was for this End that the Masters were so often called upon to make a reasonable Contribution, and all Arguments made out of that were either perforce or temerity, then into a Complacency, in making the Suitors easy, 'till a proper Fund or Method could be found out to give them entire Satisfaction. Most of the Justice I think all but our, were convinced that this was a reasonable and just Proposal, and aspers'd a Readiness to come into it; and these for this Purpose, that they were bid to consider of the Consequences of suffering their Office, and of a Complaint in Parliament.

And the whole Benefit were these Arguments thus made and offered upon the Masters? Who could profit by their Complacency, or suffer by their Reluctancy? Not the Chancellor himself! He had no self-interest to serve, no Inclination to gratify, but a just Zeal for the Publick Good, and a generous Concern for the great Lads, that was like to happen to the Suitors of the Court, without his vigorous Interposition and Assistance.

This, my Lords, I humbly hope, appears to be the first and just Principle upon which the noble Lord has founded all his Designs and Actions, to restore the Credit of the Court, which had been greatly shaken by other Men's ill Conduct; to procure the Suitors in general all the best Satisfaction now could be obtained, not partially preserving one another, but endeavouring to do every Single full and equal Justice, in such a way, that the Complaints were brought before him.

As to the Particulars proposed to be made use of by the impeached Earl, in the Case of *Harper*, surely they can be of little use.

Can it be imagined, that after fourty Years' Experience had been gained in the Court of Chancery, in relation to Mr. *Dorner's* Misconducts, and the great Losses that were like to happen to the same in Chancery, that the Chancellor himself should be the only Person that had no regard to it, and even after such time as he had been endeavouring to find out Means to remedy to great an Evil? Could any Man of his Skill, Sagacity, and Integrity be allowed to have, exclusive of it, it could be credited, even to the Court where he presided, as saying (as it is now expressed), That he was a perfect Stranger to the Affairs of the Court; that he had heard nothing of it, but as late News, a flying Report, it might be, but not of it? No, my Lords, that certainly could not be his Intention, in speaking the Words that are said to be uttered by him on this Occasion.

But when a Chancellor, under the Power of the Court, that had paid his money in to the Master, and required his conveyance to be executed, could not procure the Parties interred to execute, without actual Payment of the Purchase-money to them at the Time of the Execution, and that Money was like in Mr. *Dorner's* Hands, the full brought the Deficiency of Mr. *Dorner* in Judgment before his Lordships; and it was the first time it came regularly before him in Judgment. Upon this he declared, That thus it was a proper Time for him to give his Lordship Inquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Reports of Persons about the Town, or upon any private Conversation or Information that he might have received, and possibly might have the Expression of common Talkers of News; but now, that it came judicially before him, he would thoroughly examine into the whole Matter, and endeavour to apply a proper Remedy.

This, my Lords, we shall prove to be the Opinion and Matter of the speaking Orator Words, by Persons that were then present in Court, and the happened but in *Dorner's* last was Twelve-month, and accordingly it was ordered to be put under the immediate Examination of Mr. *Adams*, who succeeded Mr. *Dorner* in the Office, and who was at that time he admitted to be the most proper Person to perfect that Enquiry, and also because he was the most concerned in the Consequences of it: But Time has been wanting to proceed so far as he intended in that necessary Work.

My Lords, 'Till by this time, it can't be put out of the late Chancellor, as well as an any other Person belonging to the Law, must know of Mr. *Dorner's* Deficiency, yet, I believe, that none had then discovered, or even imagined how great it was; and that even his Lordships, and most other Persons, were persuaded, that whatever should appear to be wanting in one's Effects, would be supplied by the other Masters; or some other Method would be found out to prevent any real Loss to the Suitors; and in virtue of this Persuasion, Orders were made for Payment of money to the Suitors, as they apply'd for it, without directing an Average.

This is excluded against as contrary to all Equity, fair to have all, and others to lose all, when they were all to be paid out of one Common Fund.

My Lords, Had it been proved to you, that when these Orders were made, it had legally appeared to the then Chancellor, that Mr. *Dorner's* Effects would at all Events prove deficient, and that no way had been foreseen, whereby this Deficiency could have been supplied; I must admit this Objection would have been very strong: And, in that Case, to have order'd full Payment to those Suitors who first apply'd, and left nothing for those that came after, would be to be a manifest Partiality.

But this is not the present Case. When the Court order'd the first Payments to be made, it does not appear in Proof (as I humbly apprehend), that there was at that time any certain Deficiency in Mr. *Dorner's* Effects; or at least an pretence of judging how great that Deficiency was like to be. And consequently, the Payment of the whole Demand to the Suitors then first apply'd, does not necessarily infer that there would be any Loss to those which came after.

His Effects, upon further Enquiry, might possibly come out to be more than were at first discovered; they might prove sufficient to answer all Demands: Or in case the Deficiency was not very great, a moderate Contribution from the other Masters, or, may be, a reasonable Addition intended to be made to that by the Chancellor himself,



















sicious Sort of Bribery and Corruption; and yet, notwithstanding the many statutes of the severity of the Government against Bribery and Corruption, which have been taken Notice of, the Gentlemen of the House of Commons have been pleased to acknowledge, that there is no Precedent in Judgment to establish and warrant what they assert to be Law in this Point.

My Lords, I beg leave to say, that a stronger Argument than this, can hardly be thought of, to prove that this Behaviour is not illegal: It is a method of reasoning in our Law, and, I conceive, conformable to the general reason of Mankind; That where a Thing never has been done, it is to be supposed there is no Ground or Foundation for the doing it. Nor can this Way of Reasoning be avoided, but by supposing that there never have been any Instances of this Nature before, or those so rare, and private, that the Government had no Opportunity of taking notice of them: A Supposition, my Lords, so extraordinary, that there is hardly room to admit of it; and therefore, when we shall, with your Lordships Permission, lay before you Instances of this Thing having been frequently and openly done it will not be so much wonder to prove the contrary of such a Supposition, as to give an Opportunity to your Lordships, and to intreat you to reflect on the great Abilities, and unquestionable Integrity of those excellent Persons who have acted in the same manner; the Nostrity and Openness with which this has been transacted, and the perfect Silence of the grand Inquiries of the Nation, and the whole Legislature in regard thereto: And then to consider, the Cleanness and force of such a Comment upon the Law, both from the Abstemiousness of those, whose Characters will not allow of a Suspicion, that they would act contrary to what they apprehended to be the Law: And from the Silence of those, who should and would, to doubt of it, have taken severe Notice of it, if it had been thought to have been so.

But suppose, after all that has been said, that this was still a doubtful Point, would it not, my Lords, be extremely hard to raise up an old antiquated Law, which for many Centuries has quietly slept, without exercising itself, without fixing any mark, or leaving any Traces of its Force and Vigour, to point out the Danger attending such a Practice; a Practice that has been used and countenanced by such great and respectable Men, and objected to by none; and which from these might well receive the Appearance of being old and innocent: Would it not, I say, my Lords, be very hard, without some serious Notice of the Danger, to put this Law in Execution, to enforce, this really absurd to wound this Noble Earl with? We hope your Lordships would think fit, if it were capable of bearing him, which we humbly apprehend it is not; and that, if there is any Doubt remaining with your Lordships, as to the Legality of the Earl's Behaviour in this Point, that the Statute of 4th of Edw. VI. will clear it up beyond question; and that it will manifestly appear by that Statute, that accepting of Presents is neither *felonia* nor *peccatum* against the Common Law, or the Statute of Rich. II. and that this Statute of Edw. VI. must be looked upon as a declarative Law in those Points, or otherwise it could be allowed (which were sure well suppose) that the Legislature of this Kingdom has made a Provision to remedy a mortal Evil; (for that is the Import of *felonia* or *peccatum*) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the most pernicious Tendency and Consequence, if the Representation made of it by the Gentlemen of the House of Commons is to be regarded.

My Lords, I shall pass by the fourth Paragraph of that Statute, whereby it is provided, that the first Act should not extend to Offices of Inheritance; that, I presume, the Largeness of the Estate can hardly be thought to alter the moral Nature of the Action. By the fifth Paragraph, there is a Saving for all Burgages, Sales, Promises and Agreements of or for any Office made before the said Statute of Edw. VI. and for all Burgages, Sales, and Contracts, are exempted out of the Force of that Act. Your Lordships will be pleased to observe, This Session of Parliament began the 23d of January; so that this saving Clause makes a Provision for Antiquity. My Lords, this would be to establish Iniquity by a Law, if the accepting a Present on Occasion of admitting a Person into an Office, was immoral and criminal, as has been asserted. But if it were so, and likewise against the Statute of 12 Rich. II. and contrary to the supposed Oath, taken in pursuance of that Statute; what, my Lords, must be thought of the last Paragraph, which provides, that the Act should not extend to the Chief Justice, or Justice of Assize, that then were, or should be? These all actually take the same Oath (if it is to pass as such) upon the same Occasion of administering of Sheriffs, as Mr. *Ayer* has informed your Lordships; and are consequently, by virtue thereof, under the same Obligation, in this respect, as a Lord Chancellor: And can your Lordships suppose that so many renowned and learned Persons, who, from their known Duty of Attendance, must be presumed to be present in your Lordships House, whilst this Law was there under Consideration, would have forbore informing their Lordships, how contradictory those Parts of this Statute were to the Common Law, and the Statutes of this Realm, especially that of Richard II. Can it possibly be conceived, that the whole Legislature would pass a Law, not only to allow, in several Instances, the Practice of what was so contrary to the Law of Reason, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath prescribed by Statute, and actually imposed; and that nobody should ever scruple the doing so, or discover the Illegality of this Practice, but upon this unfortunate Occasion! And yet, my Lords, monstrous as these Suppositions are, they must (as I humbly conceive) be allowed of, or it must be granted that such Acceptance of Presents is not *felonia* in 4, or contrary to the Statute of Richard II. And I hope it is plain, that this Statute of Edward VI. is in effect a declarative Law in those Points.

My Lords, The Gentlemen of the House of Commons seemed sensible of these Difficulties; and therefore they have, with great Industry,

endeavoured to distinguish what the Earl has done, from the usual and ordinary way of accepting of Presents, upon such Occasions: They have told your Lordships, that his Method was higgling and haggling; and have given it abundance of other hard Names: They have, in short, informed your Lordships, that the Price is too great, higher than those formerly accepted upon the like Occasions: That have not contented to attempt the proof of it.

My Lords, As the manner of the Earl's taking of Presents will be in a great measure upon the Evidence, when has been offered to your Lordships upon their Articles; I shall not take to take time to state their force of it. As to the 9th Article, Mr. *Thomas Bower* is to be sworn in to inform your Lordships, that he did desire to have the *Advocate* Recommendation of Mr. *Heagley*, to succeed him as Clerk of the Chancery; that being told at the second meeting with Mr. *Cornwallis*, that a Present would be received, he said it was a very hard and unreasonable Thing to expect a Present from him, who had to him paid a large Sum on his being admitted into his Office: But upon his being insisted, that 100 Guineas should be paid, he was forced to comply therewith, and agree to pay it.

My Lords, I humbly insist upon it, that if an entire Credit were to be given to what Mr. *Bower* has said upon this Occasion, it would be amount to a Proof of the Charge contained in this Article. The Corruption and Extortion therein complained of, being referred to the Consideration of permitting and accepting the Service of the Clerk of the Chancery; and all the other Parts of that Article being also considered, my Lords, in Approbation of that supposed Offence. But Mr. *Bower* has not mentioned to your Lordships one Syllable of the Earl's having refused to permit or accept a Sum of five or six Offices, or of his having received any Sum of Money in Consideration of his permitting or accepting Mr. *Bower's* Surrender thereof.

But, my Lords, we shall beg leave to submit it to your Lordships Consideration, what Credit is to be given to Mr. *Bower's* Evidence, so far as it does go, for this Purpose. The Gentlemen of the House of Commons have thought to call Mr. *Cornwallis*, as a Witness to this Article; and we own that in his first Discourse with Mr. *Bower* upon this Occasion, he told them he believed a Present would be expected to the Great Seal, and that Mr. *Bower* freely offered 100 Guineas, before Mr. *Cornwallis* spoke to the Earl about this Affair. He also afterwards said Mr. *Bower* was in what he said of Mr. *Cornwallis's* insinuating upon 100 Guineas, and Mr. *Bower's* Agreement to give that Sum at the second meeting, Mr. *Cornwallis* fearing, that the offer of 100 Guineas was voluntarily on Mr. *Bower's* Part; and that it was at their first meeting. There are several other Contradictions in their Evidence, but I shall only take Notice of that, where Mr. *Bower* pretends, that Mr. *Cornwallis* offered he did not know Mr. *Heagley*, his next-door Neighbour. This Mr. *Cornwallis* denies, and Mr. *Bower* is forced in some measure to retract what he had so positively sworn; and comes down to a Belief only, that Mr. *Cornwallis* said so, but will not be positive.

It is something surprising, that after they have done Mr. *Cornwallis* the Honour to call him as a Witness, and given him a Credit by so doing, they should be thus to say, that Mr. *Cornwallis* knows nobody, except where there is Gold in the Case, that Gold is a great chance of the Light, and the like Insinuation, as the leaving his Character. But who then did they call him as a Witness? Surely, my Lords, if he is a Person not to be believed, it was not altogether to proper to produce him as a Witness before this August Assembly. But, my Lords, we shall content them in this matter, by thoroughly establishing Mr. *Cornwallis's* Reputation; 'till it is something unusual to suppose the Reputation of a Witness produced by the other side: And we hope your Lordships will thus find no difficulty in determining whether Mr. *Bower* or Mr. *Cornwallis* deserves most to be credited.

In support of the 9th Article, Mr. *Kynaston* is called as a Witness. I shall take no notice of any part of his Evidence, but what relates particularly to the Charge in this Article, the Money paid upon his Admission, and the Circumstances of that Transaction. Mr. *Kynaston* indeed has said, that he would willingly have paid but 1000, upon his Admission; and accordingly offered that Sum, which Mr. *Cornwallis* would not hearken to; and therefore he submitted to pay 1000 Guineas; but he owns, at the same time, that he has not a very exact Remembrance of what passed upon this Occasion. Mr. *Bower*, to whom Mr. *Kynaston* refers, and who was his Agent in this Business, in his Evidence has given your Lordships an Account that Mr. *Kynaston*, when understood that 1000 Guineas was apprehended to be the Present he intended to make, said, that he thought it was only 1000, but mentioned nothing of the offer of 1000. It is very strange if that had been the Case, that he should not have taken Notice of this likewise. But Mr. *Cornwallis*, who is again called as a Witness, shows the reason why no Notice could be taken of such an Offer; and that is, because there really was none such. He denies that Mr. *Kynaston* offered 1000 L and swears that the Sum offered by Mr. *Kynaston* was 1000 Guineas; and withal declared, that he would acquiesce under what the Earl should think fit in this matter; and informs your Lordships, upon his being interrogated by the Gentlemen of the House of Commons to this Purpose, that he never did acquaint the Earl with what passed upon that occasion till the whole thing was agreed and settled; and that, when he was informed of it, he expressed himself to be well satisfied therewith. Surely, my Lords, here sit extraordinary Endeavours or Artifices used to enhance the Price; we haggling, by first naming one Sum, then another; but at last the matter is proposed, and at once agreed and concluded.

To prove the 10th Article, my Lords, Mr. *Thomas Bower*, is called again; and here again the like insinuation happens as before. Mr. *Bower* differs widely from Mr. *Cornwallis*, who is called upon the same side to prove the same Article. Mr. *Bower* says, that he acquainted Mr. *Cornwallis*, that he thought 1000 L was enough to give upon his Admission, and with



has Reason for such Opinion; but that, however, he was willing to give 1000 Guineas. Mr. *Cromwell* has shown that no such Offer was made, that nothing of that Nature passed; but that Mr. *Brent*, upon being informed what had been done before upon the like occasions, freely offered 1000 Guineas.

My Lords, The very nature of the Things, upon the Circumstances agreed on all Hands, speaks strongly in favour of Mr. *Cromwell*, and in contradiction to Mr. *Brent*, as to what is asserted by each of them upon this occasion. Your Lordships observe what condition the Earl agreed to be in at that time; had Mr. *Brent* apprehended that he had to give hard terms just upon him, as he would not have your Lordships believe he did. Would he not have flayed him little more, to have him the effect of a violent a diffemper as a Plague Fever, which his Lordship then assumed under in a very high degree? especially when Mr. *Brent* appeared at the same time to be in no very good State of Health himself; of which he was removed by Mr. *Cromwell*, who was to be from selling the famous part, in behalf of the Great Seal which was not in a way to suffer, by the addition of a Person likely to make a new vacancy by Death, by perceiving Mr. *Brent* to look yellow, and out of order, he desired him to consider what he was going to do, when he took a Place for Life in his Condition. Mr. *Brent* told him, it was only a Cold; and that therefore he would proceed. This Gentleman, who was so cautious, as to pretend, as to the Sum he was to give upon his Admission, and which he then thought to be unreasonable, surrenders on this Affair, under that Circumstance of his own, as well as the Earl's State of Health; and that of the Earl's own, as he himself confesses, a sum of 1000 Guineas, into the Hands of, probably, a dying Chancellor. Will your Lordships think it more likely, that Mr. *Brent* apprehended, that as the Price of Things then went, he might not, under a new Chancellor, come into the Office upon so easy Terms as were then offered him, rather than that he thought himself to be hardly sold upon that Occasion? And here, my Lords, I beg leave to take Notice of what has been urged, to induce your Lordships to look upon this Acceptance of Presents, by the Earl in particular, to be extortive; which is, that the Sum of Money given upon these, and the like occasions, are less than they should be. Your Lordships will be pleased to observe, upon what has been said, that the Sum taken by the Earl upon the Admission of a Member into the House of Commons, has been constantly less than what the Members, who have resigned, have had as a Consideration for so doing. And it is very easy to account for the late increase of the same given upon these Occasions, without an Extortion in the matter. As personal Estates have vastly increased within these few Years, and Settlements, and Provisions for Families, have been made out of the Public Stocks and Funds, the Business of the Court of Chancery has increased proportionably; and consequently, People would be more desirous of, and give more Money for the Purchase of such Offices, which were improved by such increase of Business. And as the consideration of Money is given, in a natural way, to suppose, that People would be so, more ready to increase their Fortunes in those Things, which were likely to produce a better Income, even in proportion to the price that was run upon their Lives, than could be made of Money in any ordinary way. But whether that, which I have mentioned, or whatever else may be the Cause of it, it is to be plain and notorious that all Places and Offices have in late Years increased in their Value, that it would be misapprehending your Lordships to come into the Proof of it.

My Lords, As to the Admission of Mr. *Edwards* into his Office, and the acceptance of a Sum of Money upon that occasion, which makes up the Charge contained in the 9th Article, and as to so much of the 8th Article as relates to the like Transference with Mr. *Thynne*; there is not the least Colour or pretence from the Evidence, which has been given to support those Charges, or ground a Supposition of Haggling, or eluding a bargain: On the contrary, from that very Evidence it appears, that what was done by Mr. *Edw.* and Mr. *Thynne*, was perfectly free and voluntary; and attended with a good deal of Solicitude and Unanimity in the latter, left his Officers should not be accepted; the Circumstances of which I shall not trouble your Lordships with repeating. And tho' from the Testimony he has since met with as that Officer, he has sometimes altered his Opinion of it, your Lordships will be guided by what he then thought, and added. Your Lordships will be pleased to observe from the first Evidence, that great part of the Money presented by those Gentlemen has returned to them again; and that it is four times afterwards before it does, it was plain there was a much earlier Intention of doing so. Mr. *Edw.* has informed your Lordships, that in July following his Admission he intimated to him, that he would return part of the Money; Mr. *Thynne* received several Refusals, which plainly appeared to be in order to a Return of part of the Money which he had given; tho', on account of his being out of town, it was four times after before he knew meaning thereof, or had the Money returned.

My Lords, There is one particular Circumstance in the 8th Article, which taken up a great deal of your Time, that is, in fact, of the 8th Article as it relates to Mr. *Brent's* Office. Why that Matter was inserted there, and why it has been so much laboured, and your Lordships troubled with it, I must own myself as a Lord to conceive, unless it allowed and admitted, that the taking of Money, upon the Admission of a Person to the Office of one of the Masters of the Court of Chancery, is not purely and simply *Malum in se*, illegal, and contrary to the Statute *Re. H.* but that, if it is done to raise Money to make good the Deficiency in the Office, as was done in the Case of Mr. *Edwards*, which your Lordships have upon this occasion heard of, it is right and well. How can it be the Discrepancy in the Office be as Aggravation of the former Crime of raising a Present upon the Admission of a Person into it? It is unreasonable to submit a new Matter into an Office wherein there is a Vacancy? Is it not as necessary to fill up that Vacancy as any other? Is it more so, in order to have one, whose Duty obliges him to a particular Care of the Affairs thereof, which seem more to want it. Aggravation then of the 8th, or rather the Fault itself, must consist in not applying the Money received towards the Discharge of the Duty. But how can it be a Fault not to do so, which there had been no objection to have applied it? And how can there be an obligation to make such Application of the Money, when there is so strong an obli-

gation, as has been intimated, not to raise any Money at all by such means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakened, at least, what was laid as the Foundation for its being a Crime, and that with little or no Success in the Proof attempted to be made of this matter. So far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that Office.

I won't repeat what Mr. *Gifford* has said upon this occasion; your Lordships perceive that he and Mr. *John Bennet* were thought the best Persons to request the Affairs of Mr. *Brent*, after his death; and were accordingly appeared to do so. And upon having examined it, it appears, as well as they then could, were both of opinion, as Mr. *Gifford* says, that there was no likelihood that there would be any Deficiency; and within the Earl was acquainted. Mr. *Brent*, indeed, differs something from Mr. *Gifford*, as to the Account, which he gave of this matter; but not so much, that his Account was to be taken, as would subvert the purpose for which he was called; the aggravating the Charge in this Article against the noble Earl, who, there is no Room to doubt, would have acted as generously in this Case, as he did in the Case of Mr. *Edwards*, upon his coming into *Dorset's* office, if the Circumstances, as represented to him, had been in any near degree alike.

My Lords, I have thus stated the matter of these several Articles, to the best of my Remembrance, in its true light, as it stands upon the Evidence already given. We shall beg leave to call some Witnesses to prove, that several noble and great Persons have taken Presents upon their admission to the Office of Chancellors; first of the Office of several of the Gentlemen of the House of Commons, which have taken such Notice of, that I may safely venture to say, they will concur in the Opinion, that they were Persons of so much Integrity, that they would not have taken such Presents, if they had thought it illegal to have done so; and of so great Abilities, that their Judgment must be of the greatest weight in this Point. We shall further trouble your Lordships to explain the nature of the Payment of 64*l.* which Mr. *Thomas Mount* paid your Lordships, he made over and above the 100 Guineas paid by him on Account of the Office of Clerk of the Customs. He might, no doubt, if he had pleased, have informed your Lordships, that the most part of the 64*l.* was taken up to the Clerk of the Office, or belonging to other Officers, and that not above 33*l.* went to the Great Seal; and we apprehend that so have done so, would have been more agreeable to the Integrity with which a Witness ought to speak, than to have let it in that general manner, where it might look like another Payment to the Earl. And I hope your Lordships will excuse my offering upon this Occasion, the unhappy circumstances of the noble Earl at the time: If he takes a small Sum, as this of the 100 Guineas for Influence, it is poor, pitiful, and a Prostitution of his Honour; if a larger Sum is taken, he is wasteful, greedy, rapacious, and I don't know what! Tho' your Lordships will observe, the same account is reported according to the Nature of the Office, according to the Officers, yet given. My Lords, his very Care in other Instances is made his Fault, his Actions must be all supposed to be done with corrupt Views, and yet his not acting is equally blamed, it is Carelessness, and Negligence. This is the Light in which his whole Behaviour has been let before your Lordships, and that with all the Aggravations and Violence imaginable. But it is your Lordships who, in a fairer and calmer Season, are to weigh and judge of these Matters. It is from you the noble Earl is to expect Judgment, and it is his Happiness, that it is so. And in order thereto, when we have laid this Evidence before your Lordships, together with an Order, which shows the Payment of the Money received from Mr. *Thomas Mount* and Mr. *Keynigton*, into the Court of Chancery, and shall submit the Matter of their Admissions to your Lordships. And notwithstanding all the severe Things which have been said upon this Occasion, we humbly hope your Lordships will be of Opinion, that the noble Earl as your Lordships are not guilty of any of the Charges contained in these Articles.

Mr. *Serj. Probyn*, My Lords, we now proceed to call our Witnesses, and to prove the several Facts we have opened; and we beg leave to proceed in the same method as the Gentlemen, who are the Managers for the House of Commons, have done. As they began with the 9th Article, so we in our Evidence shall likewise begin there; and they that Professions have constantly been made to the Great Seal upon all Admissions into the Office of the Clerk of the Customs, and that in many other Offices under the Direction of the Great Seal, Presents have been usually made by the respective Officers on their Admissions; and this hath been the known uninterrupted Usage; and every Chancellor hath taken them as customary Presents. We desire, in the first place, that Mr. *Roger Lewis* may be called.

[Mr. *Roger Lewis* sworn.]

Mr. *Serj. Probyn*. We desire he may be asked, how long he hath been concerned in a Deputy in the Office of the Clerk of the Customs?

Mr. *Lewis*. I have assisted as Clerk of the Customs of Lanarney and Eldon for the space of about 35 Years.

Mr. *Serj. Probyn*. I desire he may be asked, who was the first that came into the Office of Clerk of the Customs in his Remembrance?

Mr. *Lewis*. Mr. *Henry Wyke* was the first that came on after I was Clerk there.

Mr. *Serj. Probyn*. Who succeeded Mr. *Wyke*?

Mr. *Lewis*. Mr. *Roger Twynfen*.

Mr. *Serj. Probyn*. I desire he may be asked, whether Mr. *Twynfen* be now living or dead?—Mr. *Lewis*. Mr. *Twynfen*, as I have been informed, hath been dead about thirty or 40 Years past.

Mr. *Serj. Probyn*. I desire he may be asked, whether any Present or Compliment was made to the Great Seal on Mr. *Twynfen's* Admission?

Mr. *Plummer* My Lords, I object to the answering of that question; and desire to know, whether your Lordships will have Evidence against Gentlemen that are dead, who are now capable of answering for themselves before your Lordships here? If my Lord can show any Title Right he had to tell this Place, we are ready to hear him; but to give Evidence against a Person that is dead, and cannot speak for himself, I submit that to your Lordships.

Mr.



Mr. Lutwidge. My Lords, this matter is very proper to be objected to now, and it is very necessary for your Lordships Determination in the Beginning of this Affair. I fee by this Question, and their Opening, what large Compuls the Gentlemen have taken, not only as to their Offices, but as to many other Offices for which Professions were given. I take the proper Question before your Lordships to be, Whether this be lawful by the Laws and Statutes of the Realm? And it that be the Question, I submit it, whether it is material to give an Account what other Persons have done? Whether, when a Person is brought upon a Prosecution for an Offence against the Law, it be material for him to say, that other Persons have been guilty of the same Crime? This is a Question at Law upon the Construction of the Statute, and they say it is necessary for them to give their Influence, to show the Judgment of their own Peers upon the Act of Parliament; but sure I am, it was never yet attempted to give in Evidence the Actions of other Persons in order to expound a Statute. The Explication of a Statute must be founded on the Words of the Law, and not on the Actions of other Persons. In all the Experience I have had in Cases of Prosecutions for Crimes founded on the Common Law, or on Acts of Parliament, Gentlemen argue from what the Law is, what Authorities have been in those Cases, and what the Construction hath been as former Judgments. My Lords, this is a manner of great Consideration to your Lordships, not only upon the Account of the Precedents, but also upon the Account of the Time that your Lordships are like to spend, if you are to go through all the Offices of the Law, to show in so many good ones have occurred Persons. It will take by a great deal of Time, without any Fruit at all. But, my Lords, there are other Considerations which will prove it unnecessary to submit of this Evidence: At present your Lordships have under your Consideration the Case of this noble Lord within your Bar, but would they in Defence of him impeach others, not here to defend themselves? Many of them are dead, others are living: Will you try Persons not accused, and without being present to answer for themselves? But, my Lords, with respect to ourselves, it is reasonable for us to take upon us the Examination of several Facts, without knowing who the Persons charged are, or what the Circumstances of the Case were? And we to show the Difference, or state the Circumstances? It is impossible for us to do it. My Lords, this being the Nature of the Case, it is a matter for your Lordships Judgment, now in the Beginning, that your Lordships may see the Extent of the Evidence they have hinted at, and intend to produce. That which we insist upon is two Things, that it is not material, and that there is no manner of Notice for the Parties to charge to make any Defence, or to show how the Circumstances of the Case were. So, my Lords, we must beg Leave to have your Lordships Judgment in this matter.

Mr. Ser. Cox. My Lords, if the noble Lord produces any one to make out his Innocence, we do not oppose it. But if the noble Lord undertakes to show what the Law is, from the Practice of other People, it is altogether improper. It is impossible that the Law can be judged by the Practice of other People in committing the same Faults. That can't have the Weight of the Opinion of a great man. The Opinion of a learned Person, not concerned in the Question, is an Opinion of Weight; but the Opinion of a Person concerned in the Question, is not to be looked upon as of any Authority. If the noble Lord makes use of this Kind of Evidence, by way of mitigation, or of lessening his Offence, in that View it can be of no Significance: Because the Aggravation or Mitigation of the noble Lord's Offence must arise from the particular Circumstances, Manner, and Facts of his Offence. We must submit it therefore to your Lordships Consideration, whether this is a proper Inquiry or no.

Mr. Ser. Popham. My Lords, we beg Leave to insist upon it, that this is a proper Question, and very material for the noble Earl's Defence. He hath insisted in his Answer, 'That what is objected to him in this Instance, hath been long used and practised in the Time of his Predecessors; and that such Practices have been reckoned among the ancient and known Possessions of the Great Seal; and the making and accepting thereof hath been notorious to all the World, and never before looked upon to be criminal, or complained of as such; and that he humbly hopes, that the giving or receiving of a Present on such an Occasion, is neither criminal in itself, as by the Common Law of this Realm; and that there is not any Act of Parliament by which the same is subjected to any Punishment or Judgment, which can be proved in this Prosecution; and the said Earl further hath said, that he thinks himself obliged humbly to lay this before your Lordships, not only in his own Defence, but in Vindication of the Honour of so many great and excellent men, who have been his Predecessors in the same Office, and have all along done the same, for which he is now complained of; and also of others, who have been Lord Chief Justices of the King's Bench, and Common Pleas, Masters of the Rolls, and Judges, who have likewise received Presents in money, upon the Admission of the several Officers under them in the respective Courts of justice, where they presided; and who, the said Earl is offered, never apprehended themselves to be guilty of any Crime against any good and wholesome Laws or Statutes of this Realm: And therefore we take it to be our Duty to give proper Evidence to support this Part of the noble Earl's Answer.' But, my Lords, it is objected by the Gentlemen that are Managers for the House of Commons, that they are not prepared to enter into this Proof, because they had no Notice that such Evidence would be given: In Answer to which we humbly submit it, that the Answer the noble Lord hath given, that several preceding Officers in the Courts of Law and Equity have always received such Presents, is sufficient Notice to them to be prepared to submit such Evidence as might be offered to support this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Cases, we submit it that in this Case it is a material Circumstance. Though the Predecessors of great men, (whose Names they are unwilling to hear) who have taken Presents in like Cases, and not thought it criminal, may not control your Lordships Judgment in this Particular; yet I humbly apprehend that such Influences cannot but have great Weight in the Event

of this Case. They are material Circumstances, strong Influences to incline your Lordships to believe, that this noble Lord had no intention to corrupt Debits, in accepting the common, customary Presents that were voluntarily tendered to him. And since it is made in material Part of his Defence, and that he might well think himself innocent and free from following the Examples of so many honorable and learned Persons, which we are prepared to give your Lordships many Influences in favor of, and since they have Notice of it, and that the noble Lord hath insisted upon it in his Answer, we humbly beg your Lordships will submit to give the full Influences in Evidence.

Mr. Gen. Ser. My Lords, I beg your Lordships Patience. My Lords, we humbly apprehend this is very proper and regular Evidence. I maintain that it be Evidence more proper. If the noble Lord should have the Misfortune to be thought culpable, will he not appear under another View to your Lordships, when he hath had the Conversation of several great Persons, of whole Integrity, Honor, and Knowledge, as a Question hath ever been made? If he himself hath introduced this Practice, and let it up by himself, it will then most certainly be an Aggravation; if it hath done no more than others have done, it will be an Exemption. My Lords, taking it in that Light, there is no Reason why this Evidence should not be given. But I hope your Lordships will further consider of the present Case. Here is a Law insisted upon, of several Hundred Years standing, that makes this Criminal: It is contended that there is no Determination, or Judgment at Law that this is Criminal: Practice is especially, in Respect of old Statutes, hath firmness been allowed and admitted to explain the Sense and Meaning of their Statutes. There are no Records preserved of this, and therefore we are under a Necessity to ourselves to such Evidence as we can produce of living Witnesses, and therein we apprehend we are proper, as it is Part of the matter in issue before your Lordships. Your Lordships are as well to try the Facts, Antiquity of the Common Articles. Another Circumstance they are pleased to mention against receiving this Evidence, is, the taking up of your Lordships Time. Your Lordships have had the Great Seal and Justice in their own present Possession, a very long Evidence, with repeated Objections and Openings of the Articles, in order to prove a noble Peer, on his own Body, to be Guilty: Can it be supposed, that your Lordships do not have that Patience, which is due to all People in Favor of Justice; and when one of your own Body stands impeached? For that sake, we humbly hope that this Evidence shall be admitted, and that the noble Earl shall have the Benefit of this Explanation, what the Sense of many great and excellent men hath been of this old and doubtful a Law.

Mr. Keston. My Lords, we apprehend your Lordships will not be in Opinion, that this will be to defend the present impeachment, by the impeaching of others. We say it does as the Foundation of our action, that your Lordships have done the same, notwithstanding the Statute of Edw. VI. and therefore it is a reasonable Inference, that this will be taken to be within the said Statute. We apprehend it cannot reflect upon any that are either dead or living; and that, as we are in Defence of this noble Lord, we are at Liberty to examine Witnesses, to prove the other Persons, his Predecessors, have done the same.

Mr. Stange. My Lords, I apprehend we have the same Right to justify ourselves by Precedents, as they have to accuse us by Precedents. What the noble Earl's Predecessors in their Influences have done, hath been mentioned by way of Aggravation. The Case of Dr. Edworthy hath been mentioned over and over by the Gentlemen of the House of Commons, and they have argued that the noble Earl has not followed that Precedent; and as they had a Right to question the Earl's Obedience, by not following the Precedents of his Predecessors, so we shall have the same Right to show in this Instance, that we have followed the Examples which have been set by our Predecessors. But say they, This is against Law: Whether that be so or not, is the Question, and it will be material for the Decision of that Question, to take into your Consideration, what hath been the Opinion of great men, in all Ages, upon this Act of Parliament. Common Usage, from Time to Time, even from making of the Act of Parliament, is the best Exposition that Law, Customary Usage, or the Opinion of those, who were at the Time of the making of a Law, can always be relied upon, and the best Interpretation of that Law; and therefore, as we show the Law to be conformable to what we now insist upon, I humbly beg it will be of a great Influence upon your Lordships, as to the Expectation to be put upon this Act of Parliament; it hath been said, The Way of Proceeding tends to accuse great Persons of Honor, &c. But that we do, and so it is clear as now living; we shall not enter into more a Debate it is sufficient for us that it is proper and necessary Evidence for the Defence of our Client. It is a material Evidence in this Case, whether the noble Lord have disposed of these Offices, and have incurred any Penalty; they have done it, I humbly apprehend that no Objection remains against opening into the Evidence at that Kind. Whatever is your Lordships Judgment in Point of Law, it is material for your Lordships Consideration, whether this noble Lord hath set this on foot by his own Act, or hath not used in the Paths of his noble Predecessors? Your Lordships will take it into your Consideration, and whatever the Point of Law may happen to be, it must be said, That if this noble Lord did not proceed with his Predecessors.

Earl of Macclesfield. My Lords, I would not trouble your Lordships if I did not think it necessary to insist upon your Lordships admit this Evidence: Indeed, if I thought it would impeach the Character or Reputation of any of the noble Lords, who have been my Predecessors, whether they be now dead or alive, I would undergo any Punishment that they should do it. But I hope it was innocent, both in them and me, and that in being done by Persons of such unblemished Honor, with so strong Argument of its being so; and, my Lords, I present their Example as the single Reason with me for doing of it; and if it had not been done before, I would not have done it. This was the true Ground what I have done. For what their Gentlemen say, my Lords, that this is not material, and that the Law must be proved by Law.



**Peers and Judgments.** I thought the common Law was common Usage, not that which hath constantly and openly been done without being ordered or blotted, cannot be contrary to common Law. If this be not allowed, I am highly obliged to these Gentlemen, that they have not accused me for taking means in many other Instances, relating to an Office, or influence as one only, upon the passing of every Patent that is a *feoff* *feoff* *feoff*, and constantly put in the Great Seal; if they had accused me of this, and called it criminal, I know not when to have said nay, unless Usage and Custom had justified it; I claim it as a Right, and unless Usage will prove the Right, I know no other Way. I was this is something different: In that Case, I will on no other particular Sum by Usage: I do not insist in this Case that there is a particular Sum due to a Peer, but that I had a Right, or Liberty, to accept of such a Sum as the Party should give. But, say the Gentlemen, this Evidence is to make other Persons criminal! That is very true, if this be a Crime. Those Gentlemen take it for granted, but whether it be a Crime or no, will be for your Lordships full Determination. And I am sure your Lordships will not be of Opinion that it is a Crime. If it would come not to be in your Lordships Judgment a Crime, it would be some Confusion upon my Predecessors, who all, as it is well known by any body, did the same Thing. But if this be understood to be a matter, that is admitted to have been practised, and to need no formal Proof, I had rather let this Examination alone: It is uneasy to me, to open upon any thing that can draw a Reflection upon any Person. Therefore I submit it to your Lordships.

**Mr. Serj. Popham.** My Lords, The Managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unless they are satisfied and convinced that they ought to admit it, they are to be expected for the Managers to do so. It is said, that the Things offered are in Examination: That would be a general Question, if there were not former Examples to justify it. I apprehend, for that Reason, it is an improper Time to insist upon this now: Because matters of Aggravation or Exaggeration must come subsequent to your Lordships Determination on the Articles, and will be the Consideration of your Lordships, when you come to consider of the Judgment that is to be given. I have known, by frequent Experience, in Prosecutions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to say Circumstances before the Court in mitigation of his Punishment. And if I may say, he comes to be considered of in this Manner, the Managers will have an Opportunity to give a proper Answer thereto. If on this Answer he had insisted on it as an established Fact supported by Custom, and had claimed it as of Right, it had been proper to have examined Witnesses in support of that, but when he insists upon it as a matter of Discretion, and of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give in Evidence, that which doth not make good the Defence as answer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconveniences. We do not know what may be proved on such an Admission; therefore we beg Leave to submit it to your Lordships Determination.

**Mr. Lenthall.** My Lords, It is said very readily, That this is an old, doubtful Statute, and therefore you ought not to take Notice of it. As to the doubtfulness of it, I believe it is too plain; as to the Obsolete-ness of it, it is a Statute that is read every Year in the Court of Chancery. And therefore, whatever Doubts may be of this matter in the common Law, yet this Statute makes it plain. And I defer the Counsel for the Noble Lord to tell us, where any Statute is more plain and positive, and whence they have from the least Doubtfulness of the World, but rather object that it hath gone too far. Doth any Judge, in this kind of Evidence, an Indictment for Breach of a Statute-Law, permit Persons to give Evidence that others have been guilty of the same Facts, and that therefore it is no Breach of the Law? I suppose this is to be considered as doubtful, on Construction of the Statute, what then is the common ordinary method? It is well known, that the Jury did the Fact specially, and it is referred to the Court for their Opinion on the Law. My Lords, give me Leave to mention how this matter is, here is an Act of Parliament, a general Act, the Judges are to take Notice of it, it is plain and positive; the Counsel make a Doubt on the Construction of this Statute; it is insisted upon, that other People have done it, and have not been punished; and would such a Thing be permitted to be found by a Jury, or would any Regard be had to it if found? I apprehend the noble Lord, who hath taken a great Mass of Evidence in his Time, would not have persisted in so to do: They have shown no Precedent for it; it is in its own Nature it is unreasonable. As we to examine upon the particular Matter and Circumstances of every particular Case of the several Persons that are now either Dead or Living? It is unreasonable, it is unprecedented, to suffer such Evidence; and I hope your Lordships will not admit of it.

**Mr. Popham.** My Lords, the Counsel for the noble Lord take that for granted which we deny. The admitting these Witnesses to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it, and we are willing to take care of the Reputation of the noble Lord's Predecessors. I am not a Lawyer, but I never heard that that was not a Crime, which an Act of Parliament says so. And that this is a Crime, I beg Leave to submit your Lordships, that he himself declared to be the Matters in Controversy, that they had bought their Places against Law. I take that to be a fair Question that his Opinion was, that it was a Crime.

**Lord Lenthall.** Before the Counsel withdrew, I would have said that I have explained to me by Sir Constant of the noble Lord, Whether it may be suffered on as a Piece of a Right in the Great Seal to take the same, or whether it is offered as an Examination? **Mr. Serj. Popham.** My Lords, we will upon it in both Respects. Then the Managers and C. took leave order'd to withdraw; and after five or six Times, being called in again.

**Lord Chief Justice King.** My Sergeant Popham, it is their Lordships Consent that you are at Liberty to proceed in your Evidence, as you may think good.

**Mr. Serj. Popham.** My Lords, we desire Mr. Roger Lewis may be called again.

(Mr. Lewis called.)

**Mr. Serj. Popham.** My Lords, I desire this Witness may be asked, how long he hath been a Deputy in the Office of the Clerk of the Custodes?

**Mr. Lewis.** About five-and-thirty Years.

**Mr. Serj. Popham.** Who was then in the Office?

**Mr. Lewis.** Mr. Henry Wyne.

**Mr. Serj. Popham.** How long did he continue in that Office?

**Mr. Lewis.** About Twelve Months.

**Mr. Serj. Popham.** Do you know who succeeded him?

**Mr. Lewis.** Mr. Roger Thynne.

**Mr. Serj. Popham.** My Lords, I desire he may be asked, whether any Precedent was made by Mr. Thynne on his Admission into the Office?

**Mr. Lewis.** I do not know of any Precedent made by Mr. Thynne.

**Mr. Serj. Popham.** By Mr. Wyne, or Mr. Thynne?

**Mr. Lewis.** No; but Mr. Wyne told me—

**Mr. Serj. Popham.** Is Mr. Wyne living or dead?

**Mr. Lewis.** He is dead.

**Mr. Serj. Popham.** My Lords, we beg leave to object to this: What a particular Person told him is not Evidence; we hope this shall not be admitted.

**Mr. Lenthall.** They know this was never allowed.

**Mr. Serj. Popham.** If the Man be living, the Objection is good, but now he is dead, we hope it may be allowed.

**Mr. Chief Serj.** The Gentlemen object, that we are not at Liberty to ask what hath been declared concerning that Matter by a Person that is now dead, we humbly apprehend it is within the Rule of Evidence, and I much appeal to the Memory of your Lordships, whether it is not good Part of the Evidence that hath been given by the Managers.

**Earl of Macclesfield.** My Lords, what we are giving Evidence of, is of a Thing transacted thirty-five Years ago; the Parties are all dead; He is about to give you an Account what he did, and was said to him at that Time by his Master, in his transacting that Affair. If the Person that said it were now alive, to be examined to it himself before your Lordships, it would not be Evidence without examining him; but if dead, what he said concerning this Fact may be given in Evidence, it is concerning the Party's own Act, and what he told him at the Time it was doing. Therefore we hope they will not oppose this Evidence, which as the Nature of the Thing is all that possibly can be now given.

**Mr. Sol. Gen.** My Lords, I hope this is what your Lordships will not refuse to be done. I never knew the Sayings of a dead Man given in Evidence to prove a particular Fact: They have been only admitted in Proof of general Usages and Customs; but as for a particular Fact, lying in the Knowledge of a particular Person, by his Death you have lost your Evidence.

**Earl of Macclesfield.** My Lords, if they will insist upon it, we must withdraw.

**Mr. Popham.** This Man here is upon his Oath; but the Evidence that he must give of the Saying of another, must be of a Saying not upon Oath.

**Lord Trevor.** If there be a difference in Opinion between the noble Lord and the Managers, they must withdraw. But I don't for any Reason to withdraw. I will tell my Opinion, that such an hearsay Evidence is no Evidence.

**Mr. Chief Serj.** I desire to may inform your Lordships, whether he knows any Thing as to the Transcription, of his own Knowledge?

**Mr. Lewis.** I know that Mr. Wyne, whether he has furnished, or was going to furnish, I don't remember, but he told me—

**Mr. Serj. Popham.** My Lords, they are going on again in the same Way.

**Mr. Serj. Popham.** Do you know any Thing of your own Knowledge?

**Mr. Lewis.** I had money in my Hands of Mr. Wyne's. He told me—

**Mr. Serj. Popham.** Evidence of this Sort is by your Lordships Judgment not to be permitted.

**Mr. Serj. Popham.** He informs your Lordships, that he hath known the Office thirty-five Years. Now, I desire that he may declare what hath been the Usage on Summons and Admonitions into this Office of Clerk of the Custodes, whether any Precedent, or Statute, hath been made to the Great Seal?

**Mr. Serj. Popham.** This is the same Thing again.

**Mr. Sol. Gen.** If Gentlemen put this general Question with so other View but to draw out what your Lordships have determined to be no Evidence, we must oppose it. It is a plain Question, Whether he knows of his own Knowledge that any Money was given? And we desire he may be confined to his own Knowledge.

**Earl of Macclesfield.** The Gentlemen say, that as to Matters of Usage, it is usual to enquire what old Men have said and declared. I apprehend this is a matter of Usage: we are now enquiring after; but if your Lordships are of Opinion that this should not be asked, I believe he doth not know any Thing of his own Knowledge of the money being actually paid to the Great Seal.

**Mr. Serj. Popham.** My Lords, we desire that Mr. William Coker may be called.

(Mr. Coker sworn.)

**Mr. Serj. Popham.** My Lords, we desire that Mr. Coker may be asked, whether he knows of any Demand, or Claim, made upon the Almoner or Surrender of the Clerk of the Custodes, and by whom?

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Mr.



Mr. Serj. *Popham*. My Lords, this Question is contrived in an odd manner. The Question must arise upon the Facts, not antecedent to the Fact. The Question of any Claim before should be, whether he knows of any money paid, and in what manner?

E. of *Macclesfield*. It is the stronger, if it is claimed and paid: But I apprehend, if it were only claimed, it is Evidence.

Mr. *Oaker*. I don't well understand the Question as it is put; but I remember in my Lord *Croft's* first Time, in the Year 1710, that this Office was transferred from Mr. *Thomson* to Mr. *Edwards*; I was then Secretary of the Lunatics, and I remember I required of one or both of those Gentlemen, if any Profit was made by my Lord on that Occasion, and was answered, That nothing had been actually given in the Case of that Office, and that they had finished my Lord's share. Afterwards, when my Lord *Croft* had the Great Seal again, and I was again Secretary of the Lunatics, his Lordship was pleased to oblige me, that he had suffered himself to be imposed upon in several matters, when he had the Seal before, and influenced particularly in the Affairs of transferring the Office of Clerk of the Callosities; and last, he was very well satisfied that Gentlemen had imposed upon him, by assuring him that nothing had actually been given on transferring that Office, for he was well assured there had been Profits on that Occasion, and did not see any Reason why there should not: And his Lordship ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind should happen again.

Mr. *Plummer*. My Lords, I believe this Gentleman was Servant to my Lord *Croft*, when he was Chancellor last; I desire to know if any Vacancy of this Office happened in the last Time that he was Chancellor?

Mr. *Oaker*. There was a Vacancy in the last Time. I don't know what Sum of money was given for it.

Mr. *Plummer*. My Lords, I desire this Witness may be asked, if ever he knew that my Lord *Croft* did take any Thing for the Surrender of this Place?

Mr. *Oaker*. I don't know, I believe he had nothing the first Time; but he thought himself imposed upon in it, and had not enquire about it. As to the second Time, I never could inform myself what was done in it.

Lord *Leicester*. I desire he may be asked, who it was that surrendered this Place of Clerk of the Callosities, and to whom? Name them.

Mr. *Oaker*. The first was Mr. *Thomson*, who surrendered to Mr. *Edwards*; he surrendered to Mr. *John Bennet*, and Mr. *John Bennet* surrendered to Mr. *Thomas Bennet*.

Mr. *Oaker*. My Lords, I desire, before Mr. *Oaker* goes, that he may explain himself, which of these two Times it was that my Lord *Croft* was first he was imposed upon?

Mr. *Oaker*. It was the first Time.

Mr. *Oaker*. I desire to know if he took any Thing at either Time?

Mr. *Oaker*. I don't know otherwise than as I have before declared.

Mr. Serj. *Pratt*. My Lords, we desire that Mr. *Edward Dwyer* may be called.

(Mr. *Dwyer* sworn.)

Mr. Serj. *Pratt*. My Lords, I desire that Mr. *Dwyer* may be asked, whether he knows of any Sum of money that hath been paid, or received on the Surrender or Admission of any Clerk of the Callosities?

Mr. *Dwyer*. I do not see of any money paid. I did give my Lord *Macclesfield* an Account of these had been 250 Guineas paid upon a former Surrender of that Office before this Mr. *Hamlyn* was admitted.

Mr. Serj. *Pratt*. From whom had you that Information?

Mr. *Dwyer*. My Lords, I don't know how far I may be permitted to name that Person's Name.

E. of *Macclesfield*. Name him.

E. of *Macclesfield*. Was it from one that had the Custody of the Great Seal?

Mr. *Dwyer*. Yes, my Lords.

Lord ———. Who was it from?

Mr. *Dwyer*. I had it from my Lord *Hamlyn*. My Lords, I cannot say I saw the money actually paid; neither can I say, that his Lordship received this money. But I was a Servant to my Lord *Hamlyn*, and his Lordship kept an Account of the Profits of the Office of Lord High Chancellor in his Time, in his own Writing; and I made two Copies of that Account in a large Hand writing for his Lordship's Use; and I generally made two Copies of each, for fear one should be lost or mislaid when wanted. One of these Copies I kept by me, which I have here; in it is an Account of the yearly Profits of that Office, and there is this particular sum of 250 Guineas received for the Surrender of the Office of Clerk of the Callosities, which I copied from a *Memoir*, on Account of his Lordship's own Hand-writing.

Mr. Serj. *Popham*. My Lords, I don't know what he is going to do. I hope there is very little Notice to be taken of what he hath said. A man tells a Story that is a Servant: I hope no Credit will be given to what he says.

Mr. Serj. *Pratt*. My Lords, I desire he may inform your Lordship, when it was he gave an Account to the Earl of *Macclesfield*, that so much money had been paid, and upon what Occasion it was?

Mr. Serj. *Popham*. Give an Account? he knows nothing.

Mr. Serj. *Pratt*. My Lords, I hope you will not think it an improper Question. He says, that he gave an Account, I desire to know what he gave an Account of, and if he knew upon what Occasion it was?

Mr. *Dwyer*. My Lords, the Reason of my giving this Account was, here was a Dispute between Mr. *Catlingham*, who was my Lord *Macclesfield's* Secretary, and myself, about the Office of Clerk of the Callosities. Mr. *Catlingham* told me, that Mr. *Bennet* was going to surrender his Place of Clerk of the Callosities: I asked him to whom? He told me, it was to his Neighbour Mr. *Hamlyn*. I answered, I am very glad to hear it; there will then be a Peace of money for my Lord Chancellor. Mr.

*Catlingham* said, that is more than I know; I was there ever any money paid upon the Transfer of this Office? I said, Yes, I remember it was, and I never knew any Office or Place under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him, I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord *Hamlyn* in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next Day I told Mr. *Catlingham*, that 250 Guineas had been paid on the Surrender of that Office. And afterwards, and before the Transfer, I told my Lord *Macclesfield* of it.

Mr. *Plummer*. When Mr. *Hamlyn* was named, I desire to know if Mr. *Catlingham* did not at that Time call him his Neighbour?

Mr. *Dwyer*. I did not know Mr. *Hamlyn* at that Time; but Mr. *Catlingham* called him his Neighbour.

Mr. *Plummer*. My Lords, I desire he may be asked, if he told my Lord *Macclesfield* of this before Mr. *Bennet* resigned to Mr. *Hamlyn*?

Mr. *Dwyer*. Yes, I did, my Lords.

Mr. *Plummer*. My Lords, I desire to ask him one Question. I think he is pleased to say there is no Place under the Great Seal but what is an Acknowledgment is taken for; I desire to know whether he himself had not a Place given him by that noble Lord for his Life?

Mr. *Dwyer*. No, my Lords.

Mr. *Plummer*. Had you no Place at all given you?

Mr. *Dwyer*. I have the Reversion of a Place, which is not filled in yet.

Mr. *Plummer*. What Place is that?

Mr. *Dwyer*. The Sealer's Place.

Mr. *Plummer*. Do you enjoy that Place?

Mr. *Dwyer*. No.

Mr. *Plummer*. Was there any money given for that Place?

Mr. *Dwyer*. No, Sir. It is what I had for fifteen Years Service. I was his Clerk, and I added as his Steward in Town and Country a great many Years, and his Lordship was pleased to give me that Reversion as a Reward for the Labour and Pains I took in his Service.

Mr. Serj. *Popham*. My Lords, I desire he may be asked, how long after it was that he carried this Account to Mr. *Catlingham*, that he speaks of, how long after he had found it?

Mr. *Dwyer*. I don't exactly remember: But as now as I can guess, it was the next Day, the first Time that I saw him afterwards.

Mr. Serj. *Popham*. I desire he may be asked, whether at that Time he gave Satisfaction to Mr. *Catlingham*, that he thought to be satisfied upon?

Mr. *Dwyer*. I told him so much had been given for the Surrender of that Office, and I never knew of any Office under the Great Seal transferred without money.

Mr. *Plummer*. I desire Mr. *Dwyer* may acquaint your Lordships what the yearly Value of that Office is that was given to him?

Mr. *Dwyer*. I never was in Possession of it.

Mr. *Plummer*. Do you know what is the yearly Value of it?

Mr. *Dwyer*. No.

Mr. *Plummer*. Can you give no Account of it?

Mr. *Dwyer*. No. I do not mean to be in Possession of it, I believe, these Three or four Years, and I believe he will live these Three or four Years longer.

Mr. Serj. *Pratt*. My Lords, we desire that Mr. *Lewis* may be called.

(Mr. *Lewis* sworn.)

Mr. Serj. *Pratt*. I desire he may be asked, whether he was not formerly a Clerk of the Callosities?

Mr. *Lewis*. I was a Clerk almost three-and-forty Years.

Mr. Serj. *Pratt*. I desire that he will inform your Lordships, whether any money was paid, either by him or any other?

Mr. Serj. *Popham*. My Lords, we have leave to understand your Lordship's Refutation, whether it extends to allow an Examination as to the taking of any other Offices not contained in the Articles?

Mr. Serj. *Pratt*. My Lords, we shall endeavour to prove that Acknowledgments have been actually and usually paid upon Admissions into all Offices under the Great Seal, and take it Part of this noble Lord's Defence, that it is usual for the Great Seal to take money for the transferring or other Offices.

This Witness was one of the Clerks in the Court of Chancery; therefore I hope it is proper to give Evidence of money given in those Offices, as being Offices under the Great Seal. Therefore, my Lords, I desire he may be asked, whether he hath known of any money paid to the Great Seal upon the Surrender or Admission of any Clerk?

Mr. *Lewis*. My Lords, I submit it whether it is proper for your Lordships to let them into this Evidence. I take it, that the immediate Question before your Lordships are only upon two Sorts of Offices, one of the Clerks of the Callosities, the other the Masters in Chancery. Now, whether your Lordships will let them into an Evidence of all the Offices of the Kingdom, which is very extensive, I submit to your Lordship's Consideration.

Mr. *Plummer*. Your Lordships observe, that we have not gone upon the sixth Article, where we have had that he sold several other Offices. Considering the great Extensiveness of it, and that it would draw the Trial into a great Length, we have waived it; and therefore submit it to your Lordships Consideration, whether he shall make his Defence as to that Thing we have not yet given Evidence to?

Earl of *Macclesfield*. This would be to put a great Difficulty upon me. The Charge against me being founded upon a Supposition, that taking money upon admitting Persons into Offices in this Court at Clerk's Office is criminal; Part of my Defence is, that the common Practice is, that Professions shew the general Opinion to be otherwise, and I therefore have by my Answer assailed upon it generally, not only for the one particular Office of the Clerk of the Callosities, or Masters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore, whether the Office for which I prove the money to be given be out of the Offices charged in the Articles, and proceeded upon, or



if not charged, or charged and waded, it will be the same Thing. The Argument is the same with respect to the Foundation of the Accusation; if on all other Officers, of which Persons now living can give an account, a charge have been taken without Cause, and without Benefit by the Party of Reason it may be taken in itself. I offer this Evidence, not to show I am not criminal with respect to the Curious Officers, their making that general Article which comprises them, admits it, but to make out that Branch of the Indulgence, in order to infer from the whole my not being criminal in the Particulars they do proceed upon; for if it was no Crime to take money from the Curious, and all the rest, besides the Masters in Chancery and Clerk of the Chancery, it is no more fit to take it from them: If the Objection be allowed, the Proof, which in its full Latitude would be of great Extent, and go to all my Profession within 30 or 40 Years, will be confined to a very narrow Compass, when I stand at what Account can be given in only two Sorts of Officers, by Persons who saw the money paid, and happen to be still alive. Besides, in denouncing that Argument from other Influences, I have in another Part of my Answer shewed, that other Persons of great Wisdom and Honour have likewise, without scruple, and without Censure, disposed of other Officers for money; that this hath been constantly practised in the Disposal of all Sorts of Officers in Westminster-Hall, money hath been taken for them all along; this Proof I must be cut off from too, if I am to give Evidence only of what was done in the Case of those Officers for which they proceed against me: I hope, therefore, the Gentlemen will not object to my going on to make the Proof proposed by my Counsel.

Mr. Serj. Prynne. My Lords, if it be put in this general manner of all other Courts, and in all other Influences, as appeared it will be a very extraordinary Examination. A Person is charged with a particular Charge at one Fast, and he would examine to another, which which he is not charged. This is beside the Issue, and not before your Lordships. Here is a Charge by the Commons at Great Britain, and an Answer and Defence to that, which can go only to those particular Officers charged. Now, to introduce an Evidence of this Nature, is exceeding any Rule or Influence that hath been ever heard of. If they apprehend, by propounding and insisting on it in this High Court of Judicature, they shall be allowed to proceed in a method which now, we can't tell the Consequence of, but to Allowance: And it is to no Purpose for the Managers to consent to examine to a particular Fast heard between us, when there may be a thousand Things insisted on that are not in Issue.

Lord Viscount Trenchard. I can't say this is within the Rule your Lordships had down. If it is insisted upon the Counsel must withdraw.

E. of Mansfield. My Lords, I don't know whether this will not go through a great Part of my Defence, which will be to show that other Officers have been disposed of by the Master of the Rolls, the Chief Justice, and other Judges. This is in my Answer: The Commons had Notice of it, and they have joined Issue upon it. I wonder to hear it said they have not joined Issue, when in the Answer it is insisted upon, and they have replied thereto. This is a Thing that these Gentlemen are very well aware of: it is so general and universal a Thing, that every Body knows of it. I don't know whether it is intended to make any Distinction between this Case, and what is done in other Cases; if they do, I would be glad to hear it; if they do not, then I would beg your Lordships Determination upon it.

Mr. Serj. Prynne. My Lords, we are not to declare our Opinion, whether there is any Difference, or not; the Question is in Point of Evidence.

Mr. Serj. G. G. My Lords, I don't apprehend that we have joined Issue in every Thing that the Noble Earl hath thought fit to put in his Answer. The Commons have charged him with several Crimes: He hath answered to those Crimes: The Commons reply, that they are ready to make good their Charge. By this, Issue is joined upon every Thing in the Charge; but not upon every foreign Thing that he hath put into his Answer. We insist that he is not to give Evidence of the Sale of any other Officers, but of those that he is particularly charged with. As to the Curious Officers, and other Officers that he is not charged with, we say he is to give no Evidence.

Mr. Lancelotti. My Lords, because it is insisted upon that whatever this Noble Lord hath said in his Answer we have replied to, I would observe that the very Replication takes Notice of this very Thing, and was one of the Things considered of by the Commons, and therefore the Reply is, "That he hath endeavoured to evade the Enquiries into his own Crimes, by insinuating Facts not material to the matters charged." And therefore, my Lords, we insist that he may not enquire into those matters which we have not charged.

Mr. Com. Serj. I don't know whether I may be at Liberty to add, that I humbly apprehend, that what the Gentlemen of the House of Commons now insist upon, is contradicting your Lordships Resolution already taken.

(Then the Managers and Counsel were ordered to withdraw, and being afterwards called in again, and returned.)

Lord Chief Just. King. Mr. Serj. Prynne, The Lords have resolved, That the Counsel for the Earl of Mansfield be not permitted to give Evidence touching Sale of the Office of the Curious, for that no Evidence hath been given in Relation thereto by the Managers for the House of Commons.

Mr. Serj. Prynne. Then if it be your Lordships Pleasure, we beg Leave to call one Witness more in Opposition to the Evidence given by Mr. Thomas Basset, in relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Chancery; he gave your Lordships an Account that he had paid the Sum of Sixty-four Pounds, (besides the Sum of One hundred and five Pounds, which he at first agreed to give the Great Seal) upon his Surrender of that Office. Now, my Lords, we shall shew your Lordships, that no Part of that Sum of Sixty-four Pounds was really paid to the Great Seal, as Mr. Basset seems to insinuate, but was all laid out in the Fees and Expenses of passing his Patent through the several Offices that are proper upon that Occasion. And to this End we desire that Mr. Trench may be called.

(Mr. Trench sworn.)

Mr. Serj. Prynne. My Lords, we desire Mr. Trench may inform your Lordships, if he was employed in taking out the Patent for Mr. Thomas Basset, upon his Surrender of the Clerk of the Chancery?

Mr. Trench. My Lords, I was employed by Mr. Thomas Basset to sue out the Patent, and I paid the Fees of every Office of passing the Patent, which were to be given to him and to me.

Mr. Serj. Prynne. We desire he may tell us what Office he is?

Mr. Trench. I am Clerk of the Patents to the Attorney-General, and Deputy Clerk of the Patents in Chancery.

Mr. Com. Serj. I desire he may be asked, What Part of those Fees are paid to the Great Seal?

Mr. Trench. There is a Dividend of the money arising from the Patent, of this £. 8s. 4d. and 3s. went to the Great Seal.

Mr. Com. Serj. I desire he may be asked, Whether any more came to the Great Seal out of the 6s. 4d. than £. 11s. 4d.?

Mr. Trench. I don't know that there is any more of the Dividend of the Patent. The rest went amongst others for these several Fees at the several Offices.

Mr. Com. Serj. I won't trouble your Lordships to ask to whom the rest of the money belongs, but whether the Remainder is paid over to other Offices?

Mr. Trench. I don't know that any Thing is paid to the Great Seal, upon passing the Patent Office, but the Dividend of £. 11s. 4d.

Mr. Com. Serj. I desire he may inform your Lordships, Whether the Remainder is paid to other Offices?

Mr. Trench. Yes, to other Offices, to the Stamp Office, the Secretary's Office, the Signet and Privy Seal.

Mr. Serj. Prynne. My Lords, we shall trouble your Lordships with no further Evidence on this Article: But beg your Lordships Favour to begin our Evidence on the 5th, and other Articles.

Mr. Serj. Prynne. My Lords, I desire he may be asked, Where he found the Warrant for passing the Patent at that Time?

Mr. Trench. I had the Warrant from the Secretary's Office.

Mr. Serj. Prynne. I desire he may be asked, If he knows how it came there, and by whose Direction; if he knows who procured it?

Mr. Trench. My Lords, I drew a Petition by Mr. Basset's Direction, to the Secretary of State, upon that the Petition was referred to the Attorney-General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. Serj. Prynne. My Lords, I desire he may be asked, At whose Influence he drew up that Petition?

Mr. Trench. I drew it up at Mr. Thomas Basset's Request.

Mr. Serj. Prynne. To what Purpose was that Petition?

Mr. Trench. The Petition desired that the Patent was granted to his Brother, and that upon his Brother's surrendering, it might be granted to him.

Mr. Serj. Prynne. It is the last Petition we desire to be informed of, what the Purpose of that was; not the Petition of Mr. John Basset, when he surrendered to Mr. Thomas Basset, but the Petition of Mr. Thomas Basset, when he surrendered to Mr. Henry's?

Mr. Trench. It was a Petition touching the Grant to Mr. Thomas Basset, and that he might resign to Mr. Henry's Wife, who was a Person well affected to his Majesty and the Government.

Mr. Serj. Prynne. My Lords, we now proceed to the other Articles, which relate to the Petitions made by the Masters in Chancery to the Earl of Mansfield.

[Upon this the House adjourned to the next Morning Ten o'Clock.]

## Thursday the 13th of May, 1725. The Sixth Day.

The Lords being seated in their House, and the two Proclamations being made as on the former Days.

LORD Chief Just. King. Mr. Serj. Prynne, you may go on with your Evidence.

Mr. Serj. Prynne. My Lords, we beg Leave to lay before your Lordships some Influences where, upon former Additions of Masters in Chancery, Sums of money have from Time to Time been taken by the Great Seal. We desire Mr. Alder may be called again.

(Accordingly Mr. Alder appeared.)

Mr. Serj. Prynne. We desire Mr. Alder may be asked, Whether he knows of any Sum of money paid to the Great Seal upon the Addition of a Master in Chancery, and what Sum?

Mr. Alder. My Lords, I humbly apprehend, that the Subjects of Great Britain are not compellible in any Case to give an Answer to any matter that may be to their Prejudice. I speak it with the greatest Submission to your Lordships. For my Part, I am very unwilling to do any Thing

that may any ways lessen the Security of the Subject, therefore I humbly beg your Lordships will not compel me to give an Answer to any Question of this Nature. I humbly submit it to your Lordships Judgment.

E. of Mansfield. My Lords, the Question he is asked is a general Question, whether he knows of any money paid to the Great Seal by any Master in Chancery upon his admission? Whether he knows or doth not know it?

Mr. Serj. Prynne. My Lords, we beg Leave to acquiesce the House of the Circumstances of Mr. Alder, from whence the Objection arises. He was formerly a Master, but before the late Act of Parliament he quitted that Office, and hath no Indemnification, as the present Masters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Answer to this Question, without subjecting himself to a Penalty, and accusing himself of an Offence against the Law.



Mr. Luttrell. This general Question tends to make him accuse himself, and subject himself to a Penalty.

Earl of Alder. My Lords, I would gladly know whether these Gentlemen object to this Question or not? If they object themselves to it, they have a right to do so, and to offer their Reasons, and they must be left to your Lordships' Judgment. But they have no right to insult a Witness.

Mr. Luttrell. I never endeavoured to insult any Witness. It is very well known I never expressed any such thing; and that noble Lord knows it. I am now here as Counsel, but as one of the Managers for the House of Commons, and by their Command, and in consequence of their Resolution to take Notice of this Reflection. We do not insult Witnesses, this is no such thing. It is an Objection which we have a Right to make. We have done so already, and have had your Lordships' Determination upon it. It is not very long ago, but the noble Lord may remember this very Question was directly asked of Mr. Broom, and then refused; the next Day asked again by a side-wind, whether he knew any, and what money had been given for the Place? and rejected by your Lordships; and then a Question was asked, How much he knew the Place did for? And your Lordships likewise refused that. Here now is a Question asked of a Man that hath been a Master in Chancery, and not indemnified by the last Act, whether in effect he paid any money for his Office? Your Lordships thought this indeed a Penalty, because you thought it necessary to pass an Act of Parliament to indemnify the present Masters; but it would know it did not extend to those who were Masters before; and therefore, as there is a Penalty involved in it, he ought not to answer the Question. Besides, for the sake of our Proceedings, it ought not to be answered, and so answered, and so answered, that when your Lordships have refused the same thing in another Man, the same is not to be insisted upon again.

Mr. Serj. Pryor. My Lords, it is the Duty of the Managers to take Notice of the Likeness of the Lord impeached. Whether he apprehends that he hath a right to control the Managers in this House, and whether that article in the next he enjoys, your Lordships will consider the Consequences of this Behaviour. When the first Day we were told, that we were working up the Witnesses, and now that we are reflecting them, whence could the Lord have such Imaginations but from his own former Practice?

Earl of Alder. My Lords, as to this Gentleman that thought himself abused upon, he greatly mistakes me. I did not intend to reflect upon him as going to insult the Witness in his Evidence; I believe him as far from it as any Man in England. I know him to be a Person of too much Honour; and I had not the least Thought when I spoke it, of his insinuating a Witness in that Sense. But here a Witness is making some Difficulty in answering a Question, and I thought that that Gentleman who spoke first, was the one which made the Witness's Objection; which I apprehended did not belong to the Managers so do. This is what I meant by insinuating. The Question then is asked, is Whether he hath known or not money given to the Great Seal, upon an Admission of a Master in Chancery? Say they, he was a Master in Chancery himself, therefore it may include his giving money upon his being admitted; But he that is, he may know of other Persons besides himself that gave money. My Question therefore is general, whether he knows of any money given to the Great Seal on Admission of a Master in Chancery? The Question your Lordships refused was as to Mr. Broom himself, and confined to his single Office; and had I asked Mr. Alder what he had given on his Admission to his own Office, it had been another Matter, and within your Lordships' Jurisdiction. But the Question that is now asked, includes, whether he knows hath been given by other Masters; therefore he may give an Answer without charging himself. If he answers that he doth not know of any money given by any other Master except himself, then it will come to the Question the Managers would bring it to. In the mean time give me leave to say, that those Gentlemen, by being Managers for the House of Commons, have not a Right of treating Persons in a different manner than what they should do if they were not Managers. That that Gentleman should say, that what I spoke about insinuating of Witnesses, insinuate here a Practice of any one, is a Language unworthy the Dignity of your Lordships Bar. Is this a Way of using Mankind? Is this a fit method of carrying on a Prosecution? Is this decent speaking before a sovereign Judiciary at this? What I said of insinuating a Witness imported no faultily way of Insultation.

(After a short Pause) I have said a great deal of Preparation not to be disturbed at any Expression that fall upon this Occasion. It is a false Way of reflecting a Witness, to tell him what he shall say, but to tell him he hath a legal Objection to a Question that is asked, I know no Crime in this.

My Lords, I beg Pardon for taking so much Notice of this Matter; but I will upon an Answer to this Question, whether he knows of any Money given to the Great Seal, on an Admission of a Master in Chancery? He may answer affirmatively, without at all affecting himself; and I submit, whether he ought not to do it.

Mr. Pender. My Lords, if the Counsel for the noble Lord have done, I beg leave to reply. The noble Lord says, that this Gentleman may possibly answer, and not accuse himself, but if by the Answer he may accuse himself, it is a Reason why he should not answer. The method proposed, that he may say he doth not know of any but himself, is accusing himself. As for the other Point about insinuating Witnesses, it is not our Words, but his own Witness, who refuses to answer.

Mr. Glyn. The Managers cannot but observe the indecent Behaviour of this Lord, and his wantonly manner of treating us. What we say here, we are willing to say any where. We do not think the Lord as the House should be dissuade the Managers, is of fit to be in his Place as Judge. If we do any thing unbecoming, we are subject to your Lordships' Judgment. We appear not here as common Prosecutors, and are not to be treated as common Counsel by him, as he would have treated Counsel in another Place. We are here Advocates for all the Commons of Great Britain, to demand Justice against the Earl; and submit to your Lordships, whether he is to be treated in this unbecoming manner? As for the Question, the very Reason he now gives for asking it, is the Great that was given by him for examining Mr. Broom, and your Lordships will be satisfied it. It is only by a side Wind asking a Question of a Wit-

ness, the Answer whereto will unavoidably charge him with a Crime. He cannot answer without charging himself. This Lord hath laid a Trap for the Witnesses to accuse himself. He says he may answer that he knows nothing of any money given by any Master but himself; and he directly saying that he himself hath given money. We have then this Question that is not to be asked; and we will upon the Objection.

Mr. Pender. In Duty to the House of Commons, I think myself obliged to take Notice of the strange Behaviour of this Lord in this Influence, according to your Lordships' usual Rule, that he sit within the Bar, yet is not a Judge; and therefore I must beg for myself, in the Names of Managers, and in the Names of all the Commons of Great Britain, that such Language or Behaviour be again used; if it should, we cannot but be, but must retire.

Earl of Alder. My Lords, I desire the general Question that I proposed may be asked, I do not know what is your Lordships' Pleasure. I think I have a Right to have it answered.

Mr. Pender. I objected to the Lord's going on. The Lord hath answered, we have required, and I will upon the next set a Right to speak my Duke of Argle. I hope they will withdraw.

(Ordered to sit down.)  
(Then the Managers and Counsel withdrew, and being called in again, and returned.)

Lord Chief Just. King. Mr. Serj. Pryor, the Question proposed by the noble Earl to Mr. Alder was, Whether he knows of any money paid to the Great Seal by any Master on his Admission, and Mr. Alder insisting that he had been a late Master in Chancery, and is not obliged to answer the Question, because it might tend to accuse himself, the House upon this came to a Resolution, that he is not bound to answer that Question.

Mr. Serj. Pryor. My Lords, then we desire he may be asked, whether he knows of any Sum of money paid by any other Person, except himself, upon the Admission of any Master?

Mr. Serj. Pryor. I would not presume to ask any Question that is improper, I understand your Lordships' Resolution to be, that we are not to ask the general Question of Mr. Alder, because it might affect himself; this Question, we think, will not; Whether he knows of any Sum of money given upon the Admission of any other Master.

Mr. Serj. Pryor. My Lords, we submit it, whether this Question differs at all in Construction, that if he say no in the first Words, yet it has the same Effect; It is, in other Words, to ask the same Question upon again. We hope they will not give your Lordships this Trouble.

Mr. Luttrell. My Lords, the Question implies that he gave money himself; Lord Leveson. If the Counsel would explain themselves more particularly, name the Master, the Person who received it, or any other particular Fact, then it will appear whether that be a proper Question.

Mr. Serj. Pryor. My Lords, we humbly apprehend, that we are at Liberty to ask this Question in the Form proposed, otherwise we shall as a great measure be precluded from the full Use of the noble Lord's Answer, as all in Consequence, that if he say no in the first Words, yet it has the same Effect; It is, in other Words, to ask the same Question upon again. We hope they will not give your Lordships this Trouble.

Mr. Serj. Pryor. My Lords, I shall be very loath to give any Difficulties to this Honourable House; therefore I beg Leave to know, whether we have Liberty to ask this Question, and whether your Lordships' Resolution extends to it? I humbly think it, we are at Liberty to ask the Question, and the Witness is not obliged to answer, if he apprehends that the Question is forced, he cannot answer without an Inconvenience to himself. I would not willingly ask any Question that I thought the House would think improper.

Lord Trevor. If the noble Lord insists upon this Question, it is proper that he should name some Person, concerning whom he would ask; otherwise, it is unduly to overthrow your Lordships' Resolution.

Earl of Alder. My Lords, I am very unfortunate in this Matter. I would ask him the Question in such a Manner, as should not carry any the least Imputation on him, but I should first name one Master, and afterwards another, in a piece a number of Masters it would be tedious. I only ask in short, what he knows of any money taken by the Great Seal, for, or on the Admission of other Masters? I don't ask him concerning himself, but only concerning other Masters; Whether he knows any thing of the Transactions of other Masters Admission besides his own? I hope your Lordships will think that may be asked, with this Explanation and Declaration, that it doth not extend to any thing relating to himself, but only whether he knows any thing concerning any money paid by any other Persons, and to name them particularly.

Lord Chief Just. King. You hear the Question.

Mr. Alder. Is it your Lordships' Pleasure that I should answer to the Question as I have just said? My Lords, I don't know, or remember, that ever I have a Dispute with any Master about what he gave, or what he was to give, for any Place; except I have heard Mr. Edworthy say.

Mr. Luttrell. My Lords, we object to this as not being Exonerate, but only Hearily.

Mr. Alder. Except Dr. Edworthy, I don't know one indeed.

Mr. Serj. Pryor. My Lords, we desire that Mr. Leveson may be called.

(Mr. Leveson called.)

Mr. Serj. Pryor. My Lords, we hope that Mr. Leveson, being one of the present Masters, and consequently within the Indemnity of the last Act of Parliament, may be examined, as what has happened in his Case; And we desire that he may be asked, what Sum of Money was paid to the Great Seal, on his being admitted a Master in Chancery?

Mr. Luttrell. My Lords, as to that Transaction, it is many Years ago, above twelve Years ago, so I will recollect what I know of it on the best of my Remembrance. My Lords, I never had any Treaty in that Affair with the Great Seal, nor with any Officer belonging to the Great Seal, nor did I employ any Body in it. But there was an Acquaintance of my Master in Chancery, since deceased, who apprehending it to be for my Service, without my Knowledge transacted it.

Mr. Serj. Pryor. Who was it?



Mr. *Lord*. Mr. *Swaine*, He came to me, and told me, I have got the whole matter, you must be sworn in this Night, and you must sit in the Court room or Mr. *Apfelby*, then Officers under the Great Seal, paid in Money or Bank Bills, I did find it that Night, and was then sworn in.

Mr. *Swaine*. My Lords, I desire he may be particular as to the Time, it is necessary he should be certain.

Mr. *Lord*. Mr. *Swaine* said, He had denied it with the Great Seal, that I should be sworn in that Night; my Lord *Harcourt* was then present.

Mr. *Swaine*. My Lords, I desire he may be asked, Whether he was admitted upon a Surrender?

Mr. *Lord*. I was admitted upon a Surrender.

Mr. *Swaine*. By whom?—Mr. *Lord*. Mr. *Pin*.

Mr. *Lord*. Before the Witness goes, I desire to ask him how much it was to Mr. *Pin* upon his Surrender?

Mr. *Lord*. It was 200*l*.

Mr. *Swaine*. My Lords, if the Gentleman is not gone, I desire to ask him a Question or two.

Mr. *Lord*. *Lord*head called again.

Mr. *Swaine*. My Lords, I desire he may be asked, Whether he was worth in much more, y*e* to pay 20*l*. I did pay more money at that Time?

Mr. *Lord*. Yes, my Lords, and much more.

Mr. *Swaine*. I desire he may be asked, Whether he paid it out of his own money, or out of the money then?

Mr. *Lord*. I paid it out of my own money.

Mr. *Swaine*. I desire he may be asked, Whether Mr. *Pin*, at the age of his Admission, transferred, and actually delivered over to him all the money of the duties that then was in his Hands?

Mr. *Lord*. Yes, Mr. *Pin*, to the best of my Belief, delivered over every Thing that was in his Hands to me.

Mr. *Swaine*. My Lords, We desire that Mr. *Cottingham* may be asked again.

Mr. *Cottingham* called.

Mr. *Swaine*. My Lords, We desire that Mr. *Cottingham* may be asked, Whether at any time any thing of any Transfers or Admissions, or Payment of any Sum of money on the Admission of Mr. *Harley*?

Mr. *Cot*. My Lords, I remember right there was 200*l* paid.

Mr. *Swaine*. How long ago?

Mr. *Cot*. It is several Years ago: There was 200*l*. or 200 Guineas given or paid on his Admission, several Years ago.

Mr. *Swaine*. To whom?

Mr. *Cot*. My Lords, but Richard *Holford* desired me to recommend him to the noble Lord that then had the Great Seal.

Mr. *Swaine*. Who was it?

Mr. *Cot*. The Lord *Harcourt*. Sir Richard *Holford* was my old Friend and Acquaintance; I accordingly did recommend him; Mr. *Holford* gave under a good character to my Lord *Harcourt*, my Lord agreed to admit him, but he felt desirous to know, whether he had any Estate in Fee, or sufficient to answer the Summons money; Upon my saying, that Sir Richard *Holford*, Sir Richard had had none in Fee, but he agreed to sell an Estate upon his Son, and, to the best of my Remembrance, it was either 200*l*. or 200 Guineas that were given on his Admission, for the Use of my Lord *Harcourt*.

Mr. *Swaine*. To whom was it paid?

Mr. *Cot*. I can't say whether it was paid to me, or to Mr. *Apfelby*.

Mr. *Swaine*. Who carried the Proposal?

Mr. *Cot*. I carried the Proposal. Sir Richard *Holford*, as I told you, being my Friend and Acquaintance, desired me to do it. Accordingly I carried it, the whole matter, being as I say Secretary it was left to me.

Mr. *Swaine*. My Lords, I desire to ask the Witness one Question as to this matter. He says, That Mr. *Holford* was recommended as a man of good character, I desire to know, whether he had not even since maintained that good Character?

Mr. *Cot*. Yes; he hath made an admirable good Master as ever I knew; and hath executed his Office with as much Honour and Integrity as any Master. I never heard any Complaint against him in my Life.

Mr. *Swaine*. Can you recollect who paid the money, Mr. *Holford*, or Sir Richard *Holford*?

Mr. *Cot*. Sir Richard, I believe; I can't recollect. He was a young man, I presume Sir Richard *Holford*, his Father, paid the money.

Mr. *Swaine*. I desire he may inform your Lordships, whether it was on a Surrender?

Mr. *Cot*. As I told you before it was on a Surrender; upon the Surrender of Sir Robert *Legard*, if I remember right.

Mr. *Swaine*. My Lords, if that Witness is not gone, and the Counsel for the Earl, and the Managers for the House of Commons have done with him, I desire to ask him, if he can tell whether any Account was taken of the Summons money by his Predecessor? and whether all the Summons money was delivered up by Sir Robert *Legard* to Mr. *Holford* at the Time of his Admission?

Mr. *Cot*. My Lords, I believe it was. But I was not privy to that, I do not recollect that matter; I have heard that an Account was made up, but I do not recollect it.

Mr. *Swaine*. I would not ask the first Question now; I think already has, and it already, I desire to know, if he knows, of his own Knowledge, what was given to Sir Robert *Legard* for his Surrender?

Mr. *Cot*. I know nothing of it.

Mr. *Swaine*. My Lords, if I might have your Lordships Indulgence, I desire to have this matter a little further explained, I desire Mr. *Holford* himself, or Mr. *Apfelby*, if both of them may be called.

Mr. *Swaine*. I desire to know of Mr. *Holford*, Whether, at the Time of his Admission, where he was sworn Master, Sir Robert *Legard* transferred and delivered over to him all the Effects of the Duties?

Mr. *Holford* called.

Mr. *Holford*. He did, my Lords.

Mr. *Swaine*. I desire to ask him, Whether the money, that it was said he presented to the Great Seal on his Admission, was his Father's money, or his money, or whether it was out of the Summons money?

Mr. *Holford*. My Father paid it before any thing was delivered to me.

Mr. *Swaine*. I desire to ask the Gentleman the Question, What money he paid to Sir Robert *Legard* on his Admission to his Place?

Mr. *Holford*. My Lords, I did not give it myself, I can tell your Lordships what I believe was given, and I have some reason to think I know the Truth; I believe it was 200*l*.

Mr. *Swaine*. My Lords, I desire he may be asked, How long it was after his Admission before these Accounts and Effects were delivered over to him?

Mr. *Holford*. My Lords, when I came to my Lord *Harcourt* to be sworn in, my Lord *Harcourt* had an Account delivered to me of what was in Sir Robert *Legard*'s Hands. My Lord *Harcourt* took the Paper in his Hand, and asked me, If I was satisfied to be charged with that? I told him, Yes. I was then sworn in, and a Day or two after the things were delivered over to me by Sir Robert *Legard*.

Mr. *John Bennett* called.

Mr. *Swaine*. My Lords, I desire he may be asked, What money was paid by him to the Great Seal on his Admission?

Mr. *John Bennett*. I gave Mr. *Wentworth*, the Secretary of the Great Seal at that Time, 200*l*. I don't know that it was given to the Great Seal as it was with the Duties.

Mr. *Swaine*. My Lords, When was it?—Mr. *John Bennett*. About two or three Days before I was admitted.

Mr. *Swaine*. When?—Mr. *John Bennett*. It was in March, 1716.

Mr. *Swaine*. My Lords, Who was Chancellor then?

Mr. *John Bennett*. My Lord *Grey* was Chancellor.

Mr. *Swaine*. Whether was it paid before his Admission?

Mr. *John Bennett*. It was paid before his Admission.

Mr. *Swaine*. I desire he would inform your Lordships, whether he came upon a Surrender or a Death?—Mr. *John Bennett*. It was upon a Surrender.

Mr. *John Bennett*. Upon the Surrender of whom?

Mr. *John Bennett*. Of Mr. *Adelphi*.

Mr. *Swaine*. I desire he may be asked, whether he paid it out of his own money?

Mr. *John Bennett*. It was my own money.

Mr. *Swaine*. I desire he may be asked, whether he had any Account of what was in the former Master's Hands, and when delivered over to him?

Mr. *John Bennett*. The Effects were all delivered over to me in a Week's Time, except some very small matters.

Mr. *Swaine*. What was the money that was given to your Predecessor?

Mr. *John Bennett*. It was 200*l*.

Mr. *Swaine*. Was that paid out of the Summons money, or out of your own?

Mr. *John Bennett*. It was paid out of my own money.

Mr. *Thomas Grey* called.

Mr. *Swaine*. My Lords, the Question that I shall propose to Sir Thomas *Grey*, is, under the Apprehension that I mentioned before, that we are at Liberty within the meaning of your Lordships Resolution to propose it, he being at Liberty to answer, or not to answer, if the Question carry any Imputation upon him. I would not ask a Question that is improper; I desire that Sir Thomas *Grey* will inform your Lordships what he knows has been paid to the Great Seal upon the Admission of a Master in Chancery?

Mr. *Thomas Grey*. My Lords, I never did know, of my own Knowledge, of any Sum paid to the Hands of any Lord Chancellor whatsoever.

Mr. *Swaine*. I desire he may answer the Question, Whether he hath known any Sum of money paid to the Use of the Great Seal, or of any Lord Keeper or Lord Chancellor, upon the Admission of any Master?

Mr. *Thomas Grey*. I can't tell how that may affect me; I refer that to your Lordships. I think I am not bound to answer.

Mr. *Swaine*. I think he said, He doth not know of any money paid to a Lord Chancellor. Doth he intend to include Lord Keeper?

Mr. *Thomas Grey*. Neither Lord Keeper nor Lord Chancellor.

Mr. *Swaine*. It may be, not into the Hands of a Lord Chancellor or Lord Keeper. I desire he may be asked, if he hath not known it paid to the Use of the Lord Chancellor or Lord Keeper?

Mr. *Thomas Grey*. That, I hope, I shall not be obliged to answer. I submit that to your Lordships.

Mr. *Swaine*. If the Gentleman is not pleased to give a more particular Answer we must submit.

Mr. *Swaine*. I desire to ask this Witness one Question, which will not draw him into any Inconvenience, Whether ever he was required as any Lord Chancellor's or Lord Keeper's Time, to make up an Account of the Summons money, and whether ever he did so?

Mr. *Thomas Grey*. Yes, I did it three several Times, once in my Lord Keeper's Time, and when the noble Lord that afterwards the Question was in that place, I did the like; and I did it again when my Lord *Grey* was Chancellor. At all those Times I gave a particular Account of the Sum of Money in my Hands, the Time it came in, and how it was disposed of, and the distinct Securities, in distinct Columns.

Mr. *Swaine*. He says twice in my Lord Keeper's Time: I take it, he means both the Times that my Lord *Grey* was Chancellor?

Mr. *Thomas Grey*. Yes, my Lords, and the same in my Lord *Harcourt*'s Time.

Mr. *Swaine*. I desire he may be asked, whether all the rest of the Masters did so as well as himself?

Mr. *Thomas Grey*. I believe they did; I have heard them all declare so.

Mr. *Swaine*. My Lords, we have now called all the *Strong* Witnesses that are willing or compellable to speak to this Article, we have



a great many other Witnesses than speak to this, in a constant Usage time out of mind. But we apprehend it to be against your Lordships Resolution to call and examine any Witnesses but so what they can speak of their own Knowledge, and then we have produced. We shall now beg leave to proceed to prove, That the Officers in the Court of Chancery were intended in their Value beyond what they were formerly, but not only this, but all other Officers, as they have increased in Value, have increased in the Price; all Officers have risen in Value, and the Price given in this Instance, is no more than in proportion to the Prices given for others.

Mr. *Cox. Serj.* We apprehend, your Lordships, it is so notorious that all Sorts of Officers have risen in their Value, that a very small Evidence will be sufficient. We have a great many Witnesses to this purpose, we will only call some few. We desire Mr. *Steele* may be called.

[Mr. *Steele* rises.]

Mr. *Serj. Peng.* My Lords, We desire to know, before they proceed, Whether they design to ask us to those Officers your Lordships gave their Direction last Night not to ask to. Your Lordships gave their Directions not to ask any Questions but to the particular Officers mentioned in the Articles; this is a Piece of Dexterity to elude this Resolution.

Mr. *Lane.* My Lords, I submit it to your Lordships, Whether this Attempt is not directly the same as that which was over-ruled Yesterday. If the Witness is to give an Account whether the Price of the Clerk's Office, or other Officers, have risen, they must then show that they were sold; which is the very Question your Lordships determined they should not ask to.

Mr. *Serj. Prynne.* My Lords, We were then directed by your Lordships not to press any Money was paid to the Great Seal for any other Officers, but those particularly mentioned in the Articles. We don't pretend now to ask us to the Payment of Money to the Great Seal, but only whether Officers in general have not much advanced in their Prices?

Mr. *Serj. Peng.* My Lords, it is extraordinary Usage to tell us of Officers in General; there are private Officers, there are Officers in other Courts in *Highgate-Hall*. We apprehend your Lordships Determination is so strong against what is now attempted, that they would not urge it, unless they thought that the Managers had forgotten every thing that happened.

Mr. *Cox. Serj.* My Lords, The Question we ask is, as to Employment in general, Officers in the Law, or any other Officers; we desire to inform your Lordships in general, that the Value of all Employments, not of the Law only, hath risen.

E. of *Macc.* I will inform your Lordships how the matter is. I believe this Gentleman is not intended to be asked what Officers belonging to the Great Seal are worth? but what Difference there is in the Value of other Officers, to what they were heretofore? particularly, how the Prices of the Stairs in the Solicitor's Office are increased, that they were once at such a Rate, and what they are now? That is the matter as I take it.

Mr. *Lane.* My Lords, I apprehend the Direction was given to the noble Lord not to ask concerning the Sale of any Office but what was in the Articles, and the Managers had given Evidence to. Now to ask the Difference or Increase of the Power of a Clerk in Chancery's Place, is, we apprehend, to ask to the very Thing that your Lordships have over-ruled already.

E. of *Macc.* My Lords, this is not like the Curator's Office, which is in the Disposition of the Great Seal; your Lordships Resolution was, That the Witnesses were not to inform us to their giving Money to the Great Seal. The Evidence we are now upon, is an Inquiry that relates not to any Money given to the Great Seal, but what their Persons paid to one another for an Office that doth not belong to the Great Seal.

Mr. *Grey.* At the End of your Lordships Resolution Yesterday, the Reason given why they ought not to be let into the Examination as to the Officers then in Question was, because no Evidence had been given thereby by the Managers, and it was not charged nor mentioned in the Articles, altho' the noble Lord did insist that he should be let into that Examination, because in the Preamble of his Answer, he had taken Notice of these Officers. This Case is strange, because the Officers now desired to be examined in, are number in the Articles nor Answer, nor hath any Evidence been given to them; and therefore we hope he shall not be let into this Examination.

Mr. *Cox. Serj.* We humbly hope your Lordships will permit us to enquire, whether the Business of these Officers in the Court of Chancery is now greatly increased, and whether the Value of the Offices be not increased with it?

Mr. *Serj. Prynne.* Notwithstanding your Lordships Direction in the former Question, we submit whether we may not be permitted to ask this Question, Whether the Officers in the Court of Chancery are not intended in Value much beyond what they were Seven Years ago?

Mr. *Serj. Peng.* My Lords, That is the very Question that we object to.

E. of *Macc.* What I before offered was, that there had been a Usage to make Presents to the Great Seal; I apprehend your Lordships over-ruled it as to the Curator's Office, because there was no need of an Excuse as to that Office, as there is no excuse made of it in the Articles, nor any Proof offered against us. This is not of any Payment to the Great Seal, but goes by way of Excuse as to the Sum, to show the Increase or Decrease of the Prices of Officers in general. It is notorious that Money now carries a less Interest, and that the Price of all Offices is increased. I don't know whether the Gentlemen will deny it: If they do so, I will not trouble your Lordships any farther about it.

Mr. *Serj. Peng.* We have no Occasion either to confirm or deny any thing that is not before your Lordships in Judgment. Therefore, if they expect any Answer, we give this, That it is not before your Lordships in Judgment.

Mr. *Lane.* I apprehend the Reason of your Lordships Resolution

Yesterday was, That there was no Charge in the Articles concerning these Officers; the same Reason equally holds as what they are asking now as relations to Clerks in Chancery.

Mr. *Penn.* My Lords, I should be extremely sorry to make any Objection to any Evidence that is material. But, it is pleaded & examined, that the Gentleman has far by the Increase of Quaints the Value of any Office is risen, that must be of the usual legal Value, and not according to the Sale put he left us his Masters.

Mr. *Serj. Prynne.* I desire he may be asked, Whether he does not know that the Prices of Officers are greater now than they were formerly?

Mr. *Serj. Peng.* My Lords, we don't understand they have any such Permission to ask that Question. To restrain the same Thing over and over again, we apprehend they think we are cheap.

E. of *Macc.* Your Lordships think not so or Oppose that this Question should be asked, therefore to save your Lordships' Time, I will waive the Question.

[Mr. *Goldsbrough* rises.]

Mr. *Serj. Prynne.* We will proceed, in the next Place, in Confirmation of that Part of the Answer to this Article, That two Sums of Money, mentioned to be paid to my Lord *Earl of York* by Mr. *Kyrle* since 1681, were both paid back into the Court of Chancery. We desire Mr. *Goldsbrough* may be asked, Whether he knows of the two Sums of 1500 Guineas, and 1500 Guineas, that were paid by my Lord *Manfield* into the Court of Chancery.

Lord *Leveson.* My Lords, I beg Pardon. I think the Question that the noble Earl hath asked, is I suppose not, was about the Rise and Fall of the Value of Officers in Chancery. Now, notwithstanding the noble Lord hath asked it, yet it may be proper for your Lordships Consideration, whether he should not have Liberty to ask us, if he thinks fit?

E. of *Stafford.* I think what the noble Lord hath said is reasonable, and it may be proper for our Judgment.

Lord *Vice-Chancellor.* I assure that they may wish to know.

Lord *Leveson.* It may be proper to have the Question repeated again. I therefore desire, that the Counsel for the Earl would repeat the Question again that they would have asked of Mr. *Steele*.

Mr. *Serj. Prynne.* My Lords, The Question is, Whether the Prices of Officers in the Court of Chancery, and in the Six Clerks Office particularly, are increased now more than formerly they were.

[Thompson the Manager and Counsel withdrew, and being returned.]

L. C. J. *King.* Mr. *Serj. Prynne*, the Lords have considered the Question on which you withdrew. These Lordships are of Opinion That you are at Liberty to ask the Question, Whether the Prices of Officers in the Court of Chancery, and in the Six Clerks Office particularly, are increased now more than heretofore they were?

Mr. *Steele.* My Lords, I came to be a Clerk in the Chancery Office in the Year 1681. I served my Clerkship in the Office; and in that Year, and for several Years afterwards, I knew that waiting Clerks Places were bought at 50 Guineas, or less; and after I was out of my Clerkship, I was offered a waiting Clerk's Place in the Office for 50 Guineas. They say not now, nor have Power to take a Clerk; and since that Time I have known them sold for 3, 4, and 500. My Master was a former Clerk, and he told me when Clerk's Place for 350. It was a Clerk at the Seat, and by the Custom of the Office, he that hath one Clerk cannot take another till the first Clerk be provided for; but I having a *Proviso* to go into a Seat of greater Business, that induced me to give a Note to the Gentleman that bought the Seat, that I would not be an Incumbrance on the Seat, otherwise he would not have given me so much. Since that Time I have known a former Clerk's Place sold for 500. Particularly I transferred a Sale upon a Brother-in-Law's Account, I contracted for 500, and then there was a Clerk upon the Seat that had not served half his Clerkship out.

Mr. *Serj. Prynne.* What Sum of Money had they upon taking a Clerk at that Time, I did not ask?

Mr. *Steele.* I did not in order to put my Brother-in-Law Clerk to ask Mr. *Atkinson*, what Time was that?

Mr. *Serj. Prynne.* What Time was that?

Mr. *Steele.* To the best of my Remembrance it was in 1705, or 1706, and he had 100 Guineas. Since that Time my Brother-in-Law, which was there, had 300, or 350 Guineas with a Clerk.

Mr. *Cox. Serj.* I desire he may explain to your Lordships what he means by a Clerk being an Incumbrance to a Seat?

Mr. *Steele.* By the Custom of the Office, he that is just a Clerk, shall be provided for before his Master can take another. The Master is not to hire him, cannot take another Clerk, till he is provided for by a Clerk Clerk's Place, or a waiting Clerk's Place.

Mr. *Lane.* If the Counsel have done, I desire to ask one Question; that is, The Gentleman says, he came into the Office in the Year 1681; I desire to know how many Clerks there were at that Time?

Mr. *Steele.* There were at that Time but 60 waiting Clerks; there were an Addition made, to the best of my Remembrance, in my Lord *Telford's* Time; 300 *John Telford* was then Master of the Rolls, I think there was an Addition of thirty.

Mr. *Lane.* I desire to know whether they are not reduced from 90 to 60 now?

Mr. *Steele.* They are not at present yet reduced.

Mr. *Lane.* Whether they are not intended to be reduced?

Mr. *Steele.* If any one dies without forwarding his Office, they don't fill up the Place of that Person with another, but any one may succeed.

Mr. *Lane.* How many are there now?

Mr. *Steele.* I have been told there are about 52 or 53 less than 90; They are to be reduced from 90 till they come to the ancient Number of 60, and they are reduced as they die without forwarding.



Mr. Latham. We don't expect you to give an exact Account, How many may there be?

Mr. Serj. I can't take upon me to say how many; but, as I have been in Office, I believe there are about 16 or 17 above the 60 remaining to be paid, I am not certain; but there are several Gentlemen who can give an exact Account.

Mr. Latham. I desire to know whether the Officers are not a great Number, by their being few of them?

Mr. Serj. Certainly, I believe that is pretty near the Case, the fewer the better; but the Officers are not so good as they were when I was Clerk. They have reduced several Offices belonging to them. I came out of the Office, by the Act of Parliament made For the better of the Law.

Mr. Latham. You say they are sold for more than formerly they sold for, I desire to know whether some of the Clerks, what Profit they had good Business belonging to the Office, since out made that Seat before?

Mr. Serj. Certainly it doth; if the Person succeeding had good ability, that Seat will sell for more than a Seat of less Business.

Mr. Serj. I desire that he will inform your Lordships, when it was in point of Time that their Offices sold for less a Rate?

Mr. Serj. It was in the Year 1694 that the Gentleman to whom I was Clerk furnished his Seat.

Mr. Serj. And when was it you knew 50 Guineas paid for the Office of a Waiting Clerk?

Mr. Serj. The 50 Guineas I speak of for a Waiting Clerk's Place, was in the Year 80, or thereabouts.

Mr. Serj. Whether was that before the Increase of the additional Number of Clerks?

Mr. Serj. Much about the Time that the Additional Number of Clerks was added.

Mr. Serj. I desire he would inform your Lordships, whether the Fees began to rise before any Reduction was made?

Mr. Serj. Yes, before the reduction of them.

Mr. Serj. When was the Reduction of them made?

Mr. Serj. I can't tell the exact Time. There was an Order made, but they should not be filled up if they died, without Surrender.

Mr. Serj. I desire he may be asked, Whether there was a Difference of Price between those Seats which were full or empty of Business, or whether they were all at a Par?

Mr. Serj. The Prices always varied, as there was much or little Business.

Mr. Serj. But at every Seat, whether great or less, had a Rise in proportion?

Mr. Serj. Yes.

Mr. Serj. I desire he may asked, Whether there hath not been an Act of Parliament since the Time he mentions, which hath been beneficial to the Clerks?

Mr. Serj. There was an Act of Parliament, called, *An Act for the better of the Law*, by which the 60 Clerks had the Term Fees for head of the House Bill, which was a considerable Profit; and to make up that to them, the Fees of the small Writs were given to them, and the Term Fees; but in my Apprehension, the Term Bill was a greater Advantage than these Fees that have been given in lieu of it.

Mr. Serj. That worthy Gentleman's Question hath occurred as to desire, that he would inform your Lordships, Whether, upon the whole of the Act, the 60 Clerks Office are better or worse?

Mr. Serj. In my Opinion, they were better before the Act, than they are now.

Mr. Serj. I desire, before your Lordships enter into an Examination of this Fact, I will only beg leave to take Notice as to the Time of this Returnment. The learned Masters were right in their Observations, that it was after the Vote for the Impachment; but it was before the Articles were exhibited. This is mistaken in the Answer; but I am sure the Honourable House of Commons will be so careful to do that it was a Mistake only, and that 'tis impossible it could be with my View of decaying the World, since both Facts were upon Record; the Earl was so very impatient to have his Answer in, that no Delay might be charged upon him, that I assure your Lordships the Answer was not sent till 3 or 4 o'clock in the Morning of that Day; that it was delivered in. In such a Hurry, a Mistake of this Nature, I hope will not be taken again, nor be looked upon by the House as despatch.

Mr. Serj. I thought it my Duty to observe this, before your Lordships entered into this Examination.

(Mr. Goldsmith called)

Mr. Serj. There are two Sums of Money taken Notice of to be given by Mr. Kynsley and Mr. Bannet to my Lord Mansfield, I desire you would inform your Lordships, whether these two Sums were paid back again, and when, and in what Manner?

Mr. Goldsmith. My Lords, the 23d of February last my Lord Mansfield came into Court, and deposited in Bank Notes and Silver in the Value of 3000 Guineas. The Lords Commissioners were pleased to direct the Inventory in the South Sea Annuitants, in the Name of Mr. Hylford and Mr. L. raised the two Senior Masters of the Court, for the Benefit of the Treasury of the Court.

Mr. Serj. I think, my Lords, we need not ask whether Mr. Goldsmith be the proper Officer?—*Lords*. No, no.

Mr. Serj. I would with Substitution ask another Question of Mr. Goldsmith, I would beg leave to inform your Lordships what the Question is. There hath been an Examination on the Part of the Gentlemen of the House of Commons into the Nature of these Offices, and I hope it will not be improper, Mr. Goldsmith being now at your Lordships

Bar, to ask him as to the nature of the money coming into the Masters Hands, which may be by Composition, or by the Balance of the Parties?

Mr. Serj. Yes. This must appear to the Court. No money is paid as but by Order.

Mr. Serj. The Orders are infinite. Mr. Goldsmith being the Registrar, he is properly asked, what he understands of the Office of the Court as to the Balance? It is what is to the Officers of the Court, what the Practice and Usage of the Court is. If we should produce our Orders, they might object that others are not for and therefore I beg Mr. Goldsmith, the proper Officer, may inform Your Lordships what the Practice of the Court is?

Mr. Goldsmith. Upon Deerees, when Causes are heard, the Counsel pray what Deere is proper: Where Estates are to be sold, they order the money to be brought before the Master.

Mr. Latham. My Lords, I desire to ask one Question. Mr. Goldsmith, being a very experienced Officer of the Court, hath been a good while in the Place, and probably may give your Lordships some Light into this matter. If the Question I would ask is, What he really knows the Office, whether it was used to direct the money to the Masters as the money is hath of late been directed?—*Mr. Goldsmith*. I can't say it was.

Mr. Latham. The next Question is, When it paid at Order of the Rolls and upon Security, whether there were not some Orders made by the Lord Chancellor, as well as by the Masters of the Rolls, for Payment of money to the Officers of the Rolls, that is, into Court?

Mr. Goldsmith. Yes, there was.

Mr. Latham. I desire him to explain it. Difference between paying the money into Court, and paying the money to a Master. What is understood by paying it into Court?

Mr. Goldsmith. Paying it into Court, is paying it to the Officer.

Mr. Latham. I desire to know, whether there were not some Orders made, after Mr. T. T. T. the present Officer, had given Security, for Payment of money to him?—*Mr. Goldsmith*. Yes, there were.

Mr. Latham. I desire to know, how soon after these Orders were varied?

Mr. Goldsmith. I can't remember when the Orders were varied, as to those made before Hearing, and for continuance of an Impachment.

Mr. Latham. What I ask is, Whether he had any Directions touching the varying of Orders for the Payment of money; any Directions, I mean from my Lord Mansfield, as to the Order?

Mr. Goldsmith. Money paid before Hearing, was paid into Court; money paid upon the Deerees, was brought before the Master. I had no Directions from my Lord Mansfield to vary the Order.

Mr. Latham. Was there any Variation or Difference in drawing up the Order, for two or three after the Officer gave Security, from what it was first made?

Mr. Goldsmith. Upon interlocutory motions, the money was brought before the Officer, and so it hath been ever since.

Mr. Latham. Was it always so?—*Mr. Goldsmith*. It hath been so ever since.

Mr. Latham. Ever since what time?

Mr. Goldsmith. Ever since the time that Mr. T. T. T. gave Security.

Mr. Latham. What I would know is, Whether the Orders and Directions at first were not in general, to pay the whole money into Court?

Mr. Goldsmith. No, my Lords.

Mr. Latham. How was it?

Mr. Goldsmith. On all Orders interlocutory before Hearing, it was paid in to the Officers for money, subsequent to the Hearing, it was brought before the Master.

F. of Mansfield. This Question hath been asked Mr. Goldsmith, with relation to the paying of money into Court, and being brought before a Master, I desire he would inform your Lordships what the difference between them is?

Mr. Goldsmith. Money brought into Court, is money brought in before Hearing, and is subject to the Order of the Court, to be paid out either before the Hearing or after, as the Nature of the Case requires. Money brought in after Hearing, is money to be put out on Security, and is brought before the Master.

F. of Mansfield. Whether, when money is ordered to be brought in to be disposed of, as upon a Purchase, or upon a Deere, to pay Debts, &c. The Court of the Court in all his Time hath been to bring it into Court, or before a Master?

Mr. Goldsmith. I can't say it hath been so in all my Time. Since the Revolution it hath been generally brought in before the Master, before it was brought into Court.

F. of Mansfield. Have the Orders made by me, since the Officer gave Security, been made in the same manner as those by my Predecessors?

Mr. Goldsmith. Yes, they have been the very same.

F. of Mansfield. I desire to know, when the money paid into the Hands of the Officer went into another Court, that is, upon the Officer's Death, or not giving Security, and what method was taken then?

Mr. Goldsmith. I believe, after the Revolution, there was looked upon to be a Defect in the Security of the Officer, and it was upon that Consideration that the Money was ordered before the Master.

F. of Mansfield. And afterwards, was there not an Alteration made of all the money that used to be paid to the Officer? Was it not ordered to be brought before the junior Masters?

Mr. Goldsmith. In my Lord Granger's Time, when there was a Difference between the Officer and his Deputy, my Lord Granger, upon that, did order the money to be brought, and lodged in the two junior Masters Hands.

They were such to keep a Key, and the Officer another: Whichever money was paid, it was paid out of the Clerk, kept under those Keys, and the money that was paid in was paid on that.

F. of Mansfield. Was not the money that used to be paid into the Officer's Hands, directed in to the junior Masters Hands?

Mr. Goldsmith. It was so.

F. of Mansfield. As to the money appointed to be disposed of, for payment of Debts, or otherwise, how was that paid? Was it put into the Clerk, or into the Hands of the respective Masters to whom it was referred?







will fully reflect, that he had but little Leisure, suddenly, and immediately to go through so arduous, tedious, and so tedious an Undertaking, as the setting of the feeling of the Mother Attorney, for no less than almost 30 Years of Memory, which has now appeared to be in their Hands. And your Lordships, we are persuaded, are no Strangers to the many and almost insuperable Difficulties which even at last have attended the Publication of this Affair, the great Length of Time it has taken up, the number and variety of Meetings and Consultations with Persons of the greatest Abilities and Experience to go to the Bottom of it, and whether or not yet they have been able fully to effect it, or have faced on such prospects of Labour as have laid open the whole Service, or will certainly prevent the late Mischief for the Time to come; yet, my Lords, we humbly apprehend, are Contented that what it is thought along their authority of your Lordships' Notice in determining the Guilt or Innocence of this noble Earl of the Crown laid to his Charge.

It must indeed be observed that they have, for the present, taken away the Money, Efforts, and Securities of the Sutors out of the Mother's Hands, and so have prevented any Loss for the Time to come on their part.

But whether, my Lords, they are even yet disposed of in such manner as fully to answer to the Ends proposed, whether the Ease and Convenience of the Sutors of the Court will appear to be more effectually provided for, than they were before, by the Methods that have now been taken to dispose of their Money and Securities; these, my Lords, I am afraid are Questions more easily asked than answered.

But, my Lords, all I would be understood to mean by this, is, and I mean nothing more by it, than that the setting and adjusting of the Mother's Accounts for such great Sums of Money, placed and disposed of in such variety of Hands, so difficult to be thoroughly considered or understood, and so little to be depended on if they were understood, that this, my Lords, was rather the Work of Persons at full Leisure, of Persons conversant in the nature and manner of Accounts, than that it was the Work of Vintners of Persons of different Capacities and Abilities, and so the taking of these Accounts lately has abundantly verified and proved them to be.

And then, my Lords, we humbly hope that the single Endeavour of a Chancellor to the same end, by being unsuccessful, will not be much censured, and that he will not be obliged, under the Pain of an Impeachment in Parliament, to do what, with the greatest Submission, has now not been attempted, or if attempted, has met with the same ill Success as the Endeavour of the present Earl, and could never hitherto be completely or perfectly effected.

But, my Lords, with great Submission, if the stating and settling of these Accounts, on a just and lasting Foundation, should be admitted to be the Duty and Office of a Lord Chancellor, and that he is bound under Pain of an Impeachment to take care of them, yet as this is a Work of the greatest Manner, Judgment, and Consideration, and much unreasonably to take away great Portions of Time, and put a total Stop and Obstruction to the present to all the other Branches of his Office, we humbly hope, my Lords, that his being out off in the midst of his Endeavour of this kind, and thereby prevented from further Perfection of them, that this will be a Consideration of the greatest Weight with your Lordships in determining the Fate of this noble Earl, and that he will not be made criminal for leaving it unfinished, when his Power of proceeding further therein was suddenly and unexpectedly taken from him.

My Lords, your Lordships very well know that the Balance not only of the Court of Chancery, but of all the other Courts of Westminster-Hall, and even of your Lordships Superior Court of Judicature, is and must necessarily be distributed and disposed of into variety of Hands, that have not assigned to one Province, some to another, and all of them depending on the Grace-End, the carrying on the Business of the respective Courts to which they belong.

And, my Lords, the Officers and Ministers of each of these Courts of Justice, on their being admitted thereto, give each of them the Security of an Oath, or some perfect Security for the due and faithful Discharge and Execution of their Duty, which they continue in their Offices.

Now, my Lords, what can be the End of requiring and relying on such Securities, but to relieve and ease the minds of their Superiors from the necessity of prying and examining daily into their Behaviour and Conduct, to the hindrance and neglect of their own greater and more important Duty?

The Officer is at the Peril of his Oath, or the Security he has given, even as the Peril of the Office itself, to discharge his Duty as he might, and justly forfeit his Office by a Neglect or Breach of any 1 of it of the Duty therein; and if one or two of them should have no regard to all any of these Things, and the two Righteous that are left, say, with the Chancellor himself be punished for their Sakes?

But, my Lords, Matters in Chancery are generally, if not always, chosen from the Profession of the Law, and the manner of their Education, and the nature of their Studies, are justly supposed to fit them above the Transactions of mean, of base, or little and unjust Actions.

Many of that Profession your Lordships will permit me to observe, do now, and have, in all Ages, worthily accommodated the august Body of the House of Peers, and have been advanced to the highest Dignities in the Kingdom.

And then, my Lords, I humbly hope 'twill not be thought an Observation altogether improper, that when one of this liberal Education, who has brought up in the Study and Practice of a Profession, whose very Principles consist in the Knowledge of Virtue and Honour, of the Rules of Justice and Equity, and all the Accomplishments which can adorn a Noble, or make him useful to his King and Country; I say, my Lords, I humbly hope 'twill not be improper to observe, that when such a one appears for an Office in the Civil Government, which he is in any Degree qualified for, 'tis no wonder that he should meet with a more favourable Opinion than other Persons, who perhaps may have acting but their private Fortunes to recommend them.

The very Profession of such a one, my Lords, almost a sufficient Security and Recommendation of itself, and immediately induces a Persua-

sion and Belief, that they will be looking to further their Honour, their Reputation, or, that their Credit and Esteem, which they so justly do, and ought to regard and value.

But when, my Lords, 'tis remembered that the additional Security and Sanction of an Oath is likewise required from them, when they impose the Majesty of Heaven to bind them as they perform their Duty, what Liberty, what greater or better Security can be taken from them for the future, and how (a) Discharge of their Duty, in the Office they are entering upon?

The Oath they take upon that Office, your Lordships have already heard, and no doubt will have observed, that they differ little from the Oath, which even the Lord Chancellor himself takes on his being admitted to exercise his Office.

And as they sit with him in Judgment on the Bench, share with him in carrying on the most important Business of the Court, which is in a Dignity to the Supreme Court of Judicature, as we now before, where they are made Judges necessary for the diffusing and dealing out Justice, and Equity, and fixing the Rules and Bounds of Property to the Subjects there. Can it, or will it, my Lords, be easily or readily imagined, that they should have no regard to all these sacred Things of Duty, that they should prostitute their Honour, their Conscience, and every Thing that is dear and valuable to them, for the sake of any worldly or temporal Consideration whatsoever?

These, my Lords, we humbly apprehend, are some of the Reasons which may be offered, why no personal Security has ever been required from a Master in Chancery, on his Admission into that Office, any more than from the Chancellor himself.

And if this be so, this could be no need or Occasion for the Chancellor's making any Declaration concerning their Ability or Solvency, yet we humbly hope we shall be able to show to your Lordships, that this Declaration, which is made one of the Articles of an Impeachment against this noble Earl, that even this too, was not without its just Foundation of Reason and Truth.

And this, my Lords, leads me to observe a little on the Eleventh Article of this Impeachment.

[Article XI.] My Lords, the Eleventh Article contains a two-fold Charge against the Earl, First, That whilst he continued in the Office of Lord Chancellor, in order to advance and increase the illegal and corrupt Gain arising to himself from the Sale and Disposal of the Offices of Masters in Chancery, he did admit several Persons to these Offices, who at the time of their Admission were of small Substance and Ability, and so he was troubled with the great Sums of Money and Effects of the Sutors lodged in their Hands.

The Second Charge against the Earl in this Article is, That he did publicly, in open Court, fully represent the Persons by him admitted to the Offices of Masters of the Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them.

These, my Lords, are the two Branches of this Article against the Earl; and I would beg leave to observe upon it in general that 'tis not so much as charged or intimated in any part of it, that the Earl knew, or had the least Notice of any Infidelity or Unsoundness in the Masters at the Time he admitted them to take upon them that great Trust.

If that had been the Case, or could have been clearly made out, the Complaint with us ought would not have consisted in material an Aggravation of this part of this Charge against the Earl.

They have indeed proved, that the Earl did not think fit to take the Masters own Words for their Abilities and Fortunes, and therefore never asked them the Question.

But, my Lords, we hope we shall be able to show to your Lordships, that the Earl took a much more proper and efficacious method, to be satisfied of the Truth of their Circumstances and Abilities, than by any Appeal he could have made to themselves; and that he did not content himself with having asked the Question for the sake of an Answer, which he ought to have had no regard to, whether true or false, but that he weighed, considered, and judged of the Account he received of them on his Enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an Office of so great Trust.

That in Consequence thereof, he absolutely rejected some, though their Friends offered him a greater Present, or if it must be called so, a greater Price for their Office than others, for want of an Estate or Fortune in Possession of their own, that might be some ways adequate to the great Charge they were going to be entrusted with.

That from the same Views of Security to the Sutors of the Court, he refused to admit from an Apprehension that the Sums they offered, though considerably greater than were offered by others, would too much exhaust and lessen their own Fortunes, to be able, with any Degree of Ease or Credit, to support themselves, or be confident with the Safety and Security of the Sutors Money and Effects, to be entrusted with them.

To back Instances, my Lords, we shall be able to produce to your Lordships, and when we have done, we hope we shall need to be in very little Pain for the second Part of this Charge, which the Earl be his Answer has partly admitted to be true; that is, that he believes he may, upon some Occasions, have declared, That he thought the Men Body of Masters as good, with respect both to their Estates and Ability for the Discharge of that Office, as had been at any 1 time before.

This, my Lords, the Earl owns by his Answer, That he may on some Occasions have said; and if it were true, where was the Crime of it? 'Twas indeed more than he needed to have said, as no one had Authority to require him to make any Declaration at all about the Masters.

But, my Lords, if he had said more than he needed to have said, and yet his Saying was true; we hope, my Lords, that will never be imputed to him as criminal.

Indeed, my Lords, the Honourable Managers for the House of Commons, both in their Opening, and the Course of their discourse, have referred to this Declaration a Circumstance arising from the Death of Mr. Fellows, one of the Masters, which happened just before this Declaration was made, from whence they would infer, and one of them was given to say, 'That a necessary Declaration to be made at this Time, was prior Notice that the Office was worth buying, or so that each.



But, my Lords, we hardly hope, how ingenious soever the Observation may be, that it will have no Weight with your Lordships, if the Truth and Nature of the Case itself will support the Declaration that was made upon that Occasion.

But, my Lords, before I leave this Article, I would beg leave to add one Observation more to what I have already said upon the first Part of it, concerning the Obligation on the Masters in Chancery to be faithful in the Discharge of their Duty, from the Honour of their Profession, and the Nature and Sanctions of the Oath they take on their being admitted Masters.

And, my Lords, I the rather chuse to take Notice of it, because 'tis an Argument which the Honourable Managers of the House of Commons have themselves founded on with.

Your Lordships were pleased to observe, That, in the very Beginning of their Evidence, they took great Care and Pains to exalt and dignify the Office of Masters in Chancery as high as possible, and therefore they read to your Lordships several Commissions, and put in others to the Table, from the Time of Edward the Fifth, down to this Time, to prove, That the Masters in Chancery were joined in Commission with the Master of the Rolls, and the Judges themselves, for the hearing and determining of Causes in Equity, in the Absence of the Chancellor.

And 'twas said by one of the learned Managers in the first Day's Opening upon that Occasion, That the Masters in Chancery were next in Power to the Chancellor himself, after the Master of the Rolls.

From which I would humbly presume to infer, That if this be so, if they are Persons of such Eminence and Worth, and so nearly related to Justice itself, on this concerning Masters, 'tis still a higher Obligation on them to be careful in the Discharge and Execution of their Office; and then, whether, their Considerations, whether the Ties of Honour, of Confidence, and of the Venerable Company they are from henceforth joined with, and made equal to, whether they may act as a great measure be supposed to persuade this first Enquiry, which a Lord Chancellor would otherwise think himself obliged to make, then, my Lords, we hardly hope will not be thought an Argument altogether foreign to the present Question before your Lordships, but still, we hope, at least extensive, if not wholly wipe off any Guilt, that for want of such Enquiry might possibly be imputed to the Earl on his Admission of Masters.

But, my Lords, there is one Observation further, which I cannot let pass on this Occasion, though 'tis not directly to the Article I am now upon.

And that is, my Lords, what the same learned Manager observed in his Rejoinder upon that Point, That the Offices of Masters in Chancery being Offices of such great Trust and Dignity, that no Offices were more improper to be bought and sold than they, except those of the Judges themselves.

Thus, my Lords, might, and, no doubt, was a very just and proper Observation to be made, in support of the Point they were endeavouring to maintain.

But, my Lords, it falls out very unfortunately, to disprove and weaken another Part of these Articles, which, without doubt, they have equally at Heart to maintain, and that is, the obliging these great Men, their Judges, these Masters in Chancery, to give Security for the Suitors money and effects in their Hands, as if they were not fit otherwise to be trusted with them.

They are just before made a sort of petty Chancellors, equal in Dignity and Power to the Judges themselves, and fit to be entrusted with the Disposal of the Properties and Fortunes of all the Suitors of the Court of Chancery, and therefore their Places must not be bought or sold; but here they are reduced and shamed to the low and servile Condition of a common Receiver or Rent-Gatherer, and must give Security for all the Suitors money or effects that shall happen to come to their Hands for fear they should run away with it.

All, my Lords, I shall presume to add further under this Head, is, That though one of the Masters has indeed frankly owned, That he was wiser than nothing when he came into his Place of a Master in Chancery, yet, from another Part of his Evidence, he owns, and it fully appears, that he grossly abused and imposed upon the Earl in concealing from him, of which the Earl, when he came to have Notice, very justly complained, and expressed his Surprise and Repentment, that he should pretend to come into an Office which he was not able to pay for.

And how far the same Gentleman will in time to come remember the kind and generous Return made him by the Earl, of the Fifteen Hundred Guineas, when he came to find him in Distress afterwards for want of it: Thus, my Lords, must be left to your own Confidence, and the Gratitude of his own Heart; as must also the like return of Fifteen Hundred Guineas made to another of the Masters under the like Difficulties and Liability to bear the Want of it: These, my Lords, are Instances of the greatest Greediness, Honour and Tendernefs, I had almost said Chastity, in the Noble Earl, that perhaps can be produced in Private Life on the like Occasions, however, they have been disguised and disguised by the Learning and Ingenuity of the Honourable Managers for the House of Commons.

In the mean time, my Lords, I would beg leave to observe, that the ready Paying and Producing of these Sums to the Earl, for their Places as such, their not giving him the least Notice or Intimation that it was not their own money, and the Figures and Appearances they made in the World, these all considering might easily mislead the noble Earl into a Persuasion and Relief, that they really were what they appeared to be, that they were well and sufficient to bear the Expense of it. And neither of these Two, or of the other Masters have given any Sort of Evidence, that the Earl knew, or had reason to suspect, the least Suspicion to the contrary: And if now, at last of all, the Defendants of this, and of all the others Masters placed in by the Earl shall appear to have been already made good, or to be so far secured, as to prevent any Danger of a Loss to the Suitors of the Court, from their several Offices (which we humbly hope, on the strict Examination, will appear to be the Case) we may then humbly presume to hope, that the Earl will not be thought to be criminal under a Part of this Article; but that Your Lordships great Justice will acquit him of it.

[Article XII.] But, my Lords, I would now humbly beg leave to offer a few Words and Observations on the Twelfth Article, which comes next to be considered of.

This, my Lords, charges that what the Earl was charged with, an unjust and fraudulent method was practiced in the Court of Chancery, in the Sale of Masters Places, and on the Admission of new Masters, that the Sums agreed to be paid for the Purchase thereof, were paid out of the Suitors money, either by way of Remount, or by replacing the same again in the Hands of the Selling Master, immediately after the Admission of the new one: And that by this Practice the Price and Value of these Places was greatly advanced, and Persons of small Ability and Qualifications were encouraged to contest for the same, which has occasioned great Inconveniences.

This Part, my Lords, seems only the Considerations amongst the Masters themselves, how to get into those Offices; and so far the Earl seems to be at least concerned in it.

But then comes the Charge against the Earl, that though this Practice was notorious and publick, and the Earl was fully acquainted with it, yet, for his own unjust and corrupt Profit, in the Selling of these Places, he took no measures to prevent or reform that Abuse, either by causing Schedules to be taken of the money and effects of the Suitors, either before or after the new Master, or by applying any Person to give him notice of the Transfer, and Delivery thereof. But, on the contrary, suffered the said fraudulent Practice to continue without control, whereby great Inconveniences have been made to the Suitors Money, and Effects.

My Lords, the noble Earl, by his Answer, says, That he was totally ignorant of this practice amongst the Masters; but admits, that he never gave any particular Directions for Delivery of the Suitors money and effects, by a Schedule to the succeeding Master, and says, he never knew that his Predecessors ordered such Schedules to be made; but says, he believes such Schedules were made, between the new Master and the old, on the general Order of Transfer, made of Course on the Admittance of the new Master.

Thus, my Lords, is the Earl's Answer to this Article. And as he has in general denied his Knowledge of these Practices amongst the Masters, it was certainly expected by Your Lordships, that the Honourable Managers for the House of Commons, would have fully proved it upon him, and thereby have fulfilled his Answer to this Part of the Charge.

But, my Lords, if I did not greatly mistake the Evidence to this Point, it has proved nothing more, than that the Earl knew of this Practice, at the same time that all the rest of the World did, that is, a little before Chyngesford; when the Curtain drew up, and display'd the Masters in their true Colours.

Then it was, and not before, that the Earl was let into this Secret by the kind Assistance and Help of Mr. Thomas Bosart, and the Aides on the same were made by him and others on that Occasion.

But, my Lords, with great Submission, the Earl's knowing of it at that time was a little too late for him to give any Orders for preventing or redressing it for the time to come; for the Great Seal was taken from him sometime before, and then all his Knowledge after could be of no use to him, but only to show how treacherously he had been dealt with, in not being let into this useful Part of Learning, which it might have done him any good.

And, my Lords, if this be so, as it can be no ways criminal in the Earl not to put a Stop to a Practice he was wholly ignorant of, and which the Masters least imagine amongst themselves. We humbly hope, how it soever the Masters may be thought to have derived of this noble Earl, that the Earl himself will not be thought to have derived ill of your Lordships, in not endeavouring to prevent it; and that, in Consequence thereof, Your Lordships great Justice will acquit him of this Part of the Impeachment.

And, my Lords, As to the last Part of this Charge, the not causing proper Schedules to be taken of the Suitors Money and Effects, delivered over to the succeeding Master, as a method which might, in all probability, have prevented the Practices amongst the Masters, complained in the last Part of this Article; this, my Lords, we humbly apprehend, neither was, nor is intended, even by the Articles themselves, to affect the Earl further, or otherwise, than to a certain he ought to have made use of, to put a Stop to their dangerous Contrivances, formed and set on foot amongst the Masters, to dispose of their Places to the best Advantage.

But, my Lords, if the Earl himself knew nothing of these Contrivances, if he was wholly a Stranger to, and unacquainted with the mischief, 'twill surely, we hope, be no Crime in him that he did not look out for a Cure. But, my Lords, I may, perhaps, be worth while, just to consider the wonderful Discovery that seems to have been made of their Schedules, and how far they would have answered the ends proposed, admitting the Earl had known of these Practices amongst the Masters, and had himself disposed that the Gentlemen are pleased to think he was for the remedying of them.

And, my Lords, I am afraid this would have proved very far from being an insupportable method of remedying their Evils for the time to come; for, my Lords, if the Masters would but trust one another, or any Body would trust them for a very few Days, might they not have done just the same thing they did before? Might they not have immediately replaced the Money again in the Hands of the Selling Master, or have paid off a Bond or any other Security they had given on the Borrowing of the Money, as soon as ever they were admitted, and had got the Suitors Money into their Hands? And if they had to do so, and this had been discovered and complained of, would it not, with great Justice, have been called uttering a trifling and fallacious method of Security for the Suitors, which could do them no manner of Service, but tended only to amuse and deceive them; and then whether this would not have made a better Figure in an Impeachment, than what is here fixed upon, may, we humbly hope, be thought deserving of your Lordships Notice; especially, my Lords, when it might have been so easily explained and urged, as no Court would have been by the learned Managers, that the very taking of these Schedules was for the sake of fixing into the Nature and Value of the Office to be sold, that he might the better know how to fix his Price upon it.

But, my Lords, I shall only beg leave to add one or two very short Observations more upon this Head, and then call for Justice, as we have, to speak to their two Articles.

And, my Lords, the first Observation I would beg leave to mention, is, that the Earl by his Answer owns that he did not, neither did he ever



that any of his Predecessors ordered such Schedules to be made; and that there the last Proof on the Part of the Honourable Managers of the House of Commons, that any such Schedules were made, or thought of, till Mr. *Kingfisher* was happily hit upon them.

Indeed, the Earl owns by his Answer, that he believes such Schedules were usually made between the Old Master and the New, on the General Order of the Lords made of Council in the Assistance of the new Master.

But, my Lords, there are not the Schedules the Articles mean, as I apprehend, or, if they are, the Earl at least was to have one Part of them as they should be of no Use as him in guarding against any fraudulent Practices of the Masters. And if he had had one, what Security that could have been to the Sutors of the Court, if the Masters should have disposed to make Use of their Money afterwards, this, my Lords, I am already endeavoured to consider of.

At the next Observation, my Lords, I would beg leave to make under this head, 1<sup>st</sup>, That if such Schedules had been made, what Security would this have been to the Earl, that they were in all Respects true, or well, any Security to have been depended on?

2<sup>nd</sup>, my Lords, even of the Masters themselves, in the hurry they were lately obliged to give in their Accounts, discovered afterwards several Mistakes and Omissions therein; and though they were given in upon Oath, yet as a Review, and a more narrow and careful Inspection and Discussion of them, was found they were not altogether to be relied on; and therefore the Masters were forced to let them right in their Post-Accounts, given in at some Distance of Time after, and whether, any, or what other, or better Security for the Truth of those Accounts has been yet found out, I am wholly ignorant of.

My Lords, the Third, and last Observation, I would beg leave just to mention, and submit to your Lordships under this head, 1<sup>st</sup>, Whether there be any, and what real mischief in the Practice itself, so grievously complained of in this Article?

It is, my Lords, notorious, That in every one of the Offices of their Majesty's Chancery, there is always necessarily a greater Sum of Money lying dead in the Office, than goes to pay for the Place, either for want of Securities wherewith to place the money, or from the different Claims of Persons entitled thereto; or to satisfy the Demands of Creditors, and other Persons, as they shall flow. Time to Time come in and prove their Debts, and from several other Causes, which I need not here enumerate.

And then, my Lords, Whether there be any great Difference between paying for their Places out of the Sutors Money, lying dead in their Hands, or taking for much money out of their own Estates and Fortunes, in order to let the Sutors make his deal; whether a Practice of this Nature, which does no Sort of Hurt to the Sutors, is of no Advantage to the Masters, and which the Earl himself was wholly a Stranger to, and which, if he had known, could not have been prevented; whether this can be heightened or improved into a heinous Crime in the Earl, as to need or deserve the most solemn Prosecutions, which we are acquainted with, a Practice, which by the Representatives of the whole Body of the Nation; that, my Lords, we humbly hope will defend to be thought of. In the mean time, as the Commons have chosen your Lordships to be the Judges, the Earl himself with the greatest Pleasure joins with them, and humbly appeals to your Lordships just and impartial Judgment.

Mr. Serj. *Pringle*, My Lords, the Evidence, which we have next to let before your Lordships, relates to the 1<sup>st</sup> Article, by which it stands charged, that several Masters admitted by the noble Earl were Persons of small Substance and Ability; and in that respect very unfit to be trusted with the Great Sums of money, and other Effects belonging to the Sutors, which were lodged in their Hands by Order of the Gt. Court; notwithstanding which the Noble Earl did publicly in open Court declare them to be Persons of great Fortunes, and in every respect qualified for the Trust so reposed in them, to the manifest Deceit and Prejudice of the Sutors of the said Court; But, my Lords, tho' the Charge of this Article be conceived in general Terms, yet I apprehend we are now to let account for the Abilities and Circumstances of each of the Masters, who were delivered into any particular Evidence against, upon that Head: Now the Masters, who have been admitted in by the Lordships, and against whom any Informations of this kind have been levelled, are Mr. *Kingfisher*, Mr. *Beaver*, Mr. *Ellis*, and Mr. *Thynne*. But I should in the first Place observe, as to Mr. *Ellis* and Mr. *Thynne*: That there is not the least Pretence of any Delinquency in either of their Offices, from any Evidence that has been yet offered by the learned Managers; they stand both of them without Objection in point of Substance; as to Mr. *Kingfisher*, indeed, I do own, That at the Time when he delivered in his Accounts, there appears to have been a Deficiency in his Office; but since that Time he has given such Security, as the Court is oblig'd to accept of, for securing it to the Sutors consequently. At the time of his Admission he appears to have been a man of Fortune; he had a good Estate in Land, and a considerable sum of money in Bank; and had a great deal of Wood upon his Estate: If he truly was a man of a considerable Fortune at that time, and if he appeared so, and came well seconded in other respects to the noble Lord, what Foundation is there left to support that part of the Charge against the noble Earl? As to Mr. *Beaver*, indeed, tho' he did make an Appearance in the World equal to a man of Fortune, yet he now pretends it was far from being so, tho' he had an Estate in Land; yet he has told your Lordships it was encumbered; but, with Submission to your Lordships, it does not appear that any of these Incumbrances were made known to the noble Earl, on the contrary, he appears to him in the same light as in the Year 1720, when he said he was worth 20,000*l*. and these Incumbrances being private, it is impossible the noble Earl should then know them; we shall hear at at this time he was not only a man of visible Substance, but of real Substance, equal to those, who are usually admitted into their Offices, and if he was equal, both in Reputation and Fortune, with those admitted by the noble Earl's Predecessors, we hope it shall not be imputed a Crime in him, we have trod in their Steps in that particular: In order to make this out against Mr. *Beaver*, we shall prove, that about the time when he applied to *Kingfisher*, to get back part of the 7000*l*. he then declared his Substance was so good, that if he could but have 2000*l*. he would pay the rest himself; he desired before your

Lordships that he had so, but we have Persons of undoubted Character to prove that he did pay so. And when that appears, we hope you will give the life Credit to Mr. *Beaver's* Testimony in any other particular, which concerns his Fortune; we shall likewise prove, as to Mr. *Kingfisher* and Mr. *Rogers*, that the Sums of money, which they retained, are now submitted to be returned by them respectively to the Court, to satisfy any Delinquency, in so far as the Effects of their Succession shall fall short in satisfying the same; so that upon the whole, the Sutors are in no possibility of suffering by any Transaction of *Beaver* or *Kingfisher*. We shall beg your Lordships upon this Article.

Mr. *Gen. Serj.* My Lords, we humbly apprehend, that in this Case the noble Earl is not responsible for the bad Circumstances of the Party; if he, upon inquiry, have received such an Account as is proper to rely upon, and so satisfy a reasonable man, it is sufficient: The greatness of the Truths reposed in these Masters hath been magnified, and great it is; but your Lordships will please to consider, that it is not to be expected from the Nature of the Thing, that Persons of great or overgrown Fortunes should take upon them these Offices. They have informed your Lordships, that 200,000*l*. hath been in one of these Gentlemen's hands. I believe the Persons of such vast Estates as 100,000 or 150,000*l*. would give themselves the trouble of exercising their Offices, attended with such risks, and requiring so great attendance. I believe the Office of a Master in Chancery will never find either such Buyers or Sellers; all that can be expected is, that they shall be men of reasonable Fortunes, Persons of 4 or 500*l*. a Year, brought up with a liberal Education; Persons who are of good Characters as to their Integrity and Abilities; this is all that can be reasonably expected, and we apprehend it hath appear'd to your Lordships, that these Masters, whose the Evidence hath been given of, were such, and such a Representation was made of them to the noble Earl. My Lord, I shall submit it upon the Evidence given in that behalf by the Gentlemen of the House of Commons in this Prosecution, that Mr. *Kingfisher* did appear no way unfit, but a Person proper to be admitted into such an Office; no Objections are made either to Mr. *Ellis* or Mr. *Thynne*. As to Mr. *Thomas Beaver*, it will appear that his Delinquency will be made good, and that is the best proof of his Ability; and, we hope, Mr. *Kingfisher's* will be so too: As to Mr. *Thomas Beaver*, he hath denied that ever he told Mr. *Kingfisher*, that if he would return 2000*l*. he would pay the rest. Being ask'd, whether he had desired to any Body, that he had made that offer to Mr. *Kingfisher*, he answered directly in the Negative, that he had not; so, that he was sure he had not; he was asked the Question over and over. But, if my Informations don't fail me, we shall produce three Witnesses to show your Lordships, that Mr. *Beaver* declared the same thing over and over again, and consequently it cannot be a Slip of his memory.

[Mr. *Beaver* called.]

Mr. Serj. *Pringle*, I desire he may inform your Lordships, as to what Reputation and Character Mr. *Beaver* was of, in point of Fortune, when he was admitted Master?

Mr. *Beaver*, Which of the Benets?—Mr. Serj. *Prob.* Mr. *Thos. Beaver*. Mr. *Beaver*. It is near two Years ago since Mr. *Thos. Beaver* came to be admitted a Master in Chancery, he was looked upon then to be a man of good Substance and of good Reputation; and since that he had married a Lady of a good Fortune, he made a good Appearance in the World, and was generally esteemed to be a man of Substance.

Mr. Serj. *Pringle*, Did he keep his Coach?

Mr. *Beaver*. I have heard so; I don't know that of my own Knowledge. Mr. *Plummer*. My Lords, if the Counsel have done, I desire to know what Character Mr. *Beaver* had as to his Integrity, whether he was accounted an honest man or no?

Mr. *Beaver*. My Lords, I never heard to the contrary in my life; not ever knew any thing to the contrary.

[Mr. *Waller* rises.]

Mr. Serj. *Pringle*, We desire that Mr. *Waller* will inform your Lordships, what he knows of any Proposal or Agreement for the Repayment of any money by Mr. *Kingfisher*.

Mr. *Waller*. My Lords, Mr. *Kingfisher*, by order of the Court of Chancery, was to be examined upon Interrogatories, whether he had paid over all the monies and securities of the Sutors of the Court of Chancery to his Successor Mr. *Beaver*? It having been alleged by Mr. *Beaver*, that he retained out of them 7500*l*. Mr. *Kingfisher* did think fit to submit to the Payment of that money, so make it much good to the Sutors of the Court, as the Estate of Mr. *Beaver* should prove defective in satisfying, as appears by the Petition delivered by him, and the Answer to the Petition.

Mr. *Larwood*. We shall for that by the Petition, We desire that the Copy of the Petition may be read; they are giving an Account of written Evidence; I desire to ask you, whether you are not concerned as Clerk for Mr. *Beaver*?

Mr. *Waller*. I am concerned for Mr. *Kingfisher* as his Solicitor.

Mr. *Larwood*. Whether you had any Authority from Mr. *Kingfisher* to present that Petition?

Mr. *Waller*. I had Authority to present that Petition.

Mr. *Larwood*. When did you present the Petition?

Mr. *Waller*. About three or four Days ago.

Mr. Serj. *Pringle*. We desire to see what the Petition is? It hath been presented since the Great Seal is in Commision; Read it.

[Mr. *Waller* reads it.]

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain,

The humble Petition of *John Hume*, Esq. late one of the Masters of this Court,

Sheweth,

THAT by an Order of the 13<sup>d</sup> of Feb. last upon the Affidavit of *Thomas Beaver*, Esq. your Prisoner's Successor, (who swore that the Sum of 7500*l*. part of the Monies belonging to the Sutors of this Court, did remain in your Prisoner's Hands, and was never paid over



"taken it was ordered that your Petitioner should be examined upon Interrogatories, whether all the Monies, Securities, and other Effects, belonging to the Sutors of the Court, were delivered over by your Petitioner to the said Thomas Bower, and whether your Petitioner kept away any, and what Part, by him.

"That Interrogatories have been accordingly prepared, and your Petitioner is ordered to put in his Answer, on or before the 20th of February.

"That your Petitioner, by reason of his Indisposition, is not in a Capacity to put in his Examination.

"That though your Petitioner did pay over, satisfy, and assign to the said Thomas Bower, all the Monies, Effects, and Securities of the Sutors of the Court in your Petitioner's Hands; and the said Thomas Bower hath given your Petitioner a Receipt in full for the same, yet inasmuch as the said Thomas Bower shall fall short to satisfy the said Demands of the Sutors of the Court, your Petitioner is willing to pay the Sum of 7500*l.* into Court, subject to the Order of the Court, to be used as your Petitioner can raise the same; and your Petitioner is willing to pay the Sum of 1000*l.* part thereof, within ten Days, and the Residue thereof within three months, so as the same (as between your Petitioner and the said Thomas Bower) may not be construed to extend to raise the said Thomas Bower's Estate from being liable, in the first Place, to answer the Demands of the Sutors of the Court; but so as the same may abide as a Security to answer any Deficiency of the said Thomas Bower's Estate; and to the End it may appear whether there will be any Deficiency or not, that the real and personal Estate of the said Thomas Bower may be forthwith sold and disposed of; and in the first Place applied to answer the Demands of the Sutors of the Court; and the latter, for that your Petitioner is informed the said Thomas Bower hath, pursuant to some Order of this Court, by Recognizance, and the said Affirmance, subjected his whole Estate towards making good those Demands.

"Your Petitioner therefore most humbly prays your Lordships, that, upon Payment into Court of the said 7500*l.* on the Terms aforesaid, subject to the further order of the Court, all further Proceedings upon the said Order, for compelling your Petitioner to be examined upon Interrogatories, may be stayed.

"And your Petitioner, &c."

*He reads the Order, May 8th, 1725.*

"UPON Payment of 3000*l.* into Court, and giving Security, such as Mr. Holford shall approve of, for Payment of the further Sum of 4500*l.* also into Court, in a month, both sums to be subject to the further Order of the Court, let all Proceedings for the compelling the Petitioner to be examined upon the Interrogatories before the said Master, be stayed. Hereof give Notice forthwith.

"*T. Jekyll, C. S.*

"*R. Raymond, C. S.*"

Mr. Serj. *Prebble*. I would be glad to know, whether we can rely upon this as an authentic Order. Did he examine it?

Mr. *Waller*. The original Petition and Answer are in the Register's Office, to draw up an Order.

Mr. *Lutwyche*. Is it a right, a true Copy?

Mr. *Waller*. It is.

Mr. *Lutwyche*. Did you examine it?

Mr. *Waller*. Yes, I did.

Mr. *Gen. Serj.* It is not wholly immaterial to examine into the Circumstances of this Gentleman, I would ask, whether Mr. *Holmes* is a Person of Ability, sufficient to make good this Sum?

Mr. *Waller*. My Lords, I don't know the Circumstances of Mr. *Holmes*, nor his Estate. I believe he is able to do what he hath proposed. I believe he hath paid the 1000*l.* in money this morning; he told us he would, and he hath proposed Security for the Remainder, 4500*l.* and I believe the Security will be approved of.

Mr. *Lutwyche*. If they have done, I desire he may be asked, How long ago it was since Mr. *Holmes* was ordered to be examined upon Interrogatories?

Mr. *Waller*. I think the Order is dated the 20th of February.

Mr. *Lutwyche*. And how long ago is it since that Proposal was made?

Mr. *Waller*. The Petition was presented the 20th of this instant May.

Mr. *Lutwyche*. Was the Petition presented before his Examination? When was it answered?

Mr. *Waller*. It was answered the 20th of May. It was presented a Tide while before. I believe two or three Days. There was an Order, that Mr. *Holmes* should put in his Examination in four Days, or should commit himself thereupon this Petition was presented.

Mr. *Lutwyche*. I think it was on Payment of 500*l.* money, and giving Security for the rest, that all Proceedings were to stay. I don't find Mr. *Waller* can say the money is paid, or Security given.

Mr. *Waller*. Mr. *Holmes* told me the 3000*l.* was paid, and I know he hath offered Security for the 4500*l.*

Mr. *Lutwyche*. One or two Securities?

Mr. *Waller*. I believe only by *Jake Buckworth*.

(*Mr. Richard Rogers turns.*)

Mr. Serj. *Prebble*. I desire he may be asked, what he knows of the Payment of any money, or the disbursement of Payment of any money into Court by Mr. *Rogers*, the late Master, in Satisfaction of the Deficiency of Mr. *Kynaston*?

Mr. *Rogers*. I find, my Lords, by the Direction of Mr. *Rogers*, the late Master, under a Petition about the latter End of April, upon the 28th or 29th of April, to the Right Honourable the Lords Commissioners, and thereby did offer to give a Recognizance to make good to the Sutors of the Court any Sum not exceeding 6000*l.* as the Estate of Mr. *Kynaston* should prove defective in satisfying the Effects of the Sutors of the Court. The Petition is answered, and I believe they design to pay the money.

Mr. Serj. *Prebble*. Have you the Petition?

Mr. *Lutwyche*. Is the Order drawn up?

Mr. *Rogers*. The Petition told I have in my Hand,

(*The Clerk reads.*)

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain,

The humble Petition of *William Rogers*, Esq. late one of the Masters of the High Court of Chancery.

Sheweth,

THAT by an Order, made by your Lordships the 20th of January last, it was ordered, that Mr. *Kynaston*, one of the Masters of the said Court, who succeeded your Petitioner, should in a Week deposit the Sum of 26,908*l.* 11*s.* 3*d.* in the Bank of England, to the Balance of the Account of Money and Securities of and belonging to divers Sutors of the said Court, paid into the Hands of the said Master *Kynaston*, and your Petitioner, or in Default thereof, that the said Master *Kynaston* should turn into a Recognizance, in the Penalty of 53,817*l.* with two or more Sureties, to answer and pay the same, your Lordships should direct.

That the said *Kynaston*, not having paid the said 26,908*l.* 11*s.* 3*d.* into the Bank, or given Security for the same, as the said Order directed; and having before proposed, towards Satisfaction of the said 26,908*l.* 11*s.* 3*d.*, to assign over a Debt of 20,890*l.* owing to him from one *De la Hay*, for the Benefit of the said Sutors; it was by your Order made by your Lordships the 29th of January last, ordered, that the said Master *Kynaston* should assign over *De la Hay*'s Debt to Mr. *Holford*, one other of the Masters of the said Court, for the Benefit of the said Sutors, and should give his own Recognizance for the said 26,908*l.* 11*s.* 3*d.* in the Penalty of 53,817*l.* And upon his so doing, the Time for his performing the said former Order should be enlarged to the Wednesday following.

That by another Order made the 3d of February last, your Lordships ordered, That upon Mr. *Kynaston*'s assigning of the said Debt, and upon his signing his Consent to be examined upon Interrogatories for Discovery of all other his real and personal Estate, and that the same might be assigned and conveyed to the said Master *Holford* in Trust for the said Sutors, the Time for performing the former Order should be enlarged to the Wednesday following.

That pursuant to the said Order, the said *John Kynaston* assigned over the said *De la Hay*'s Debt; but the same not being sufficient to answer the said Sum of 26,908*l.* 11*s.* 3*d.*, *Nicholas Panton*, Solicitor at Law, and on Behalf of the Sutors of the said Court, on the 15th of February last, preferred his Petition to your Lordships, setting forth the several Proceedings aforesaid; and that it appeared by Mr. *Kynaston*'s Affidavit, that 6000*l.* Part of the said 26,908*l.* 11*s.* 3*d.* was retained by your Petitioner, at the Time your Petitioner surrendered his said Office to the said Mr. *Kynaston*; and that the same still remained in your Petitioner's Hands; it was therefore prayed, that your Petitioner might forthwith pay the same for the Benefit of the said Sutors, or to such Person, and in such manner as your Lordships should direct.

That upon hearing the said Petitioner, upon the 23d of February last, your Lordships were pleased to order your Petitioner should be forthwith strictly examined before Mr. *Holford*, one of the Masters of the said Court, whether all the Monies, Securities, and Effects, belonging to the said Sutors, were delivered over by your Petitioner to the said Mr. *Kynaston*, and whether he kept any, and what Part thereof by him.

That in pursuance of the last Order Interrogatories have been exhibited for the Examination of your Petitioner; and in case your Petitioner should put in his Examination therein, he doubts not but that it would appear that your Petitioner both acted with great Justice towards the said Master *Kynaston*, and that Mr. *Kynaston* ought to answer and make good the said 6000*l.* to the Sutors of the said Court; howbeit your Petitioner being unwilling that any Part of the Deficiency at the said Master *Kynaston*'s Office should be imputed to your Petitioner, or that the Sutors of the Court should be put to any Expense or Trouble, in making any further Enquiry touching the said 6000*l.*

Your Petitioner is willing (if your Lordships shall think fit) to give his own Recognizance, or a good and sufficient mortgage, to be approved of by any of the Masters of this Court, to such Person or Persons as your Lordships shall direct, to answer and make good to the Sutors of this Court any Sum not exceeding 5000*l.* as the Estate and Effects of the said Mr. *Kynaston* shall fall short of satisfying the said 26,908*l.* 11*s.* 3*d.*, which he was order'd to deposit in the Bank of England as aforesaid; or if your Lordships shall think it more for the Benefit and Security of the said Sutors, that your Petitioner should bring 6000*l.* into Court, your Petitioner is willing to bring in stock or bonds for the Purpose aforesaid, having a reasonable Time allowed him to call the same.

Forasmuch therefore as it is not pretended, but that your Petitioner hath paid and delivered over to Mr. *Kynaston* all the money and Securities belonging to the Sutors of this Court, which were in your Petitioner's Hands at the Time when he surrendered his said Office to the said Mr. *Kynaston*, except the Sum of 6000*l.*

Your Petitioner humbly prays your Lordships will be pleased to make such Order in the Premises, as to your Lordships shall seem meet; and that in the mean Time all Proceedings upon the said Order of the 23d of February last, for examining your Petitioner upon Interrogatories, may be stayed.

"And your Petitioner, &c."

The Clerk reads the Order, 29th of April, 1725. Upon the Petitioner's paying the said 6000*l.* into Court, subject to the further Order of this Court, let all Proceedings upon the said Order of the 23d of February last, for examining the Petitioner upon Interrogatories, be stayed. Hereof give Notice forthwith.

*J. Gilbert, C. S.*

*R. Raymond, C. S.*

There was another Petition preferred, but never answered.

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to a certain List of *Hait* their Demand. My Lords, I have  
 appeared the Contingence to be directly otherwise; and that the  
 are not tied down at all. As they were no Parties to the Compe-  
 sion, they were not bound by it; nor is Mr. *Wijffe*, by this Compeli-  
 sion, in any degree discharged as to the Suits of the Court, so that if  
 he will be able to pay the Writhe, as is full as liable to the Demand of  
 the Suits, so it this Compellion is to be seen, and of this he will  
 be able to avail himself. The Suits, that this had no Number, which  
 however, I apprehend was of the Nature of the Thing impracticable.

My Lords, It was insisted upon, That the Petitioners, and Orders,  
 and Reports on this Occasion were in an unusual and scandalous manner;  
 and that Certificate had been sent to your Lordships as prove, That they  
 were never filed and registered, as was usual in other Cases: But do they,  
 my Lords, pretend to say, that it is not by the Order, or which the Petition-  
 ers; but I never yet heard it was but due to see them drawn up and  
 registered; and therefore, if there was any thing unusual in this, it is not  
 imputed to the Neglect of the public List, unless that it was proved  
 to have been by his express Direction.

My Lords, It has already appeared, that this Compellion, and the  
 proceedings upon it, did not proceed for the Noble Earl; but were pro-  
 ceeded to him; Mr. *Edwards* did acquit in your Lordships. That it was  
 himself, who first proposed it to the Court, after having advised with Mr.  
*Edwards*, who put him into that Mind.

That, My Lords, is the Nature of our Defence against the 13th and  
 14th Articles of the Complaint. What we have to shew, is the actual Steps  
 that were taken, will appear to have been for a Benefit and Advantage  
 of the Suits, and with no other View, than the Pleasing their  
 whole Demand; that the Compellion for much complained of, was given  
 only as means towards the attaining that End, and could in no  
 Event be prejudicial to the Suits of the Court, as the Guardians of the  
 House of Commons would represent it to your Lordships.

[Mr. *Dumrie* *Parliament* *from*.]

Mr. *Senj. Pryde*. My Lords, we desire Mr. *Parliament* may be asked,  
 What Contention passed between him and Mr. *Dumrie* president to his  
 going abroad, this upon what Consideration he was obliged to do so?  
 Mr. *Parliament*. Mr. *Dumrie* came about the latter End of No-  
 vember, 1725, at my Chambers. I had then somebody else with me, upon  
 that Account he said nothing to me, but desired I would come next  
 morning early to him. I went, and with me I came to him. He lived then  
 in Chambers in Lincoln's-Inn, he shut the Door, and told me, he had  
 a thing to say of importance to come over to me in relation to himself;  
 and then told me, he desired to go abroad. He said Mr. *Wijffe*, his  
 Goldsmith, the Day before had been with him (this was a *Week* Monday,  
 and he had been with him the 3rd of July) and had acquainted him,  
 that the *Justice* following he should be obliged to shut up Shop,  
 and stay Prisoner, if he had a great deal of Money in his Hands, and he  
 was afraid, that as soon as it was known, that Mr. *Wijffe* was unable to  
 pay, the Solicitors, and Proctors belonging to the Court, who know he  
 kept Mr. *Dumrie*'s Cash, would immediately be summoned, and that Appli-  
 cation would be made thereon to my Lord Chancellor; and he believed, that  
 the said thing to be done, in relation to himself, would be to confine him;  
 and that there would be an Order for him being committed; and there-  
 fore, to prevent that (for he could not live a Week without Air and Li-  
 berty), he was resolved to withdraw himself, and retire to some Place or  
 other. Upon this, I expressed a great deal of Concern, and endeavoured  
 to persuade him against it, desired him to make those Circumstances known  
 to my Lord Chancellor and the Masters. He said No; he was sure the  
 Consequence would be his Confinement, and was come to a Determination  
 with himself to secure his Person, his Unanimity, was from the Fear  
 that he should be confined; but he would leave every thing fairly behind  
 him, and hereafter come over and obey any Order from my Lord Chan-  
 cellor; but the first Thing he would do, was he resolved to withdraw,  
 to secure himself from being confined.

Mr. *Senj. Pryde*. What happened after he was gone abroad; and what  
 Notice was taken of it?

Mr. *Parliament*. In a little time after this, I understood he had put his  
 Relations in Execution, and had withdrawn himself. He had desired  
 that I should not mention it to any Body, and gave out by his Clerk,  
 that he was gone into the Country. I did, and in about three  
 Weeks, received a Letter from him, that he was then at *Retterdam*,  
 and was a Letter which, which he desired me to show to one of the  
 Masters. I think I showed it to Mr. *Reynolds* afterwards, according to  
 his Direction in the Letter to me, I carried it to Mr. *Cuthbertson*. It  
 was directed to Mr. *Cuthbertson*, who was then Secretary to my Lord  
 Chancellor; I carried the Letter to him, and left it with him.

Mr. *Senj. Pryde*. If you can, recollect what were the Particulars of  
 this Letter, the Contents of it, relating to any Terms or his coming over  
 again.

Mr. *Parliament*. It is a great while ago, I have but a faint Remem-  
 brance of it; but I think it was much to the same Purpose with what I  
 have mentioned to me at first, after he had acquainted me with the un-  
 happy Affair, as hath been mentioned. He had he had a great Sum of  
 Money in Mr. *Wijffe*'s Hands; and when he found *Wijffe* unable to pay,  
 he was apprehensive of an immediate Consequence, which he could not  
 possibly bear; therefore he had withdrawn himself, but that he had left  
 his own Affairs entire behind him, and every thing relating to the business,  
 and was willing to come over to give an Account of the State of the  
 Office, and of his own Estate, and he was willing to make over all his  
 Affairs to the Receiver of the Debts of the Office, as far as it would go,  
 and to give them the Court should think fit to reduce him, provided  
 he might see his Liberty to look behind him, and after. He desired he might  
 not be confined, and he would do every Thing that the Court would  
 order him to do, or that he desired of him, as much as it was con-  
 sistent.

Mr. *Senj. Pryde*. We desire he may be asked, If he knew how it was  
 that Mr. *Wijffe* was not to have so much of Mr. *Dumrie*'s Effects in his  
 Hands, and upon what Account?

Mr. *Parliament*. I did not know, till this Affair happened of *Wijffe*'s  
 falling, what Money he had in his Hands before, let to Mr. *Dumrie*. I  
 used to see Mr. *Wijffe* with him; I knew Mr. *Wijffe* had Cash of him in his  
 Hands; but afterwards, by way of Justification of himself, he telling so  
 much Money, I heard him say, it was an unhappy Accident, he had a con-  
 siderable Sum of Money paid into his Hands, by Order of Court, and a  
 considerable Sum, which came in upon the Land-Tax, and he did not  
 know at that Time, what to lay it out in; the Stocks were so high and  
 precarious, he would not buy any; and he thought *Wijffe*'s Hands as safe  
 a Place as any at that Time; he could not keep it by him in his Cham-  
 bers, and he was going into the Country for three or four Weeks; and  
 when he saw things were settled, then he would lay it out: But when  
 he came back to Town, he found Mr. *Wijffe* in the declining Con-  
 dition. This was after he received from *Holland*. I knew no-  
 thing before of this, nor that he had any great Sum of Money in his  
 Hands.

Mr. *Senj. Pryde*. He says that he did propose that he would come over  
 and make a Discovery of, and deliver up his Effects, as each his Person was  
 secured; now I desire he may recollect, before he did conceive, if he knew  
 of any Steps taken to secure his Effects, and whether any Thing in his  
 Chambers was taken care of, and by whom?

Mr. *Parliament*. I can give no other Instance of it, than that Mr. *Reynolds*,  
 a Master in Chancery, came to me one Morning, and said, I was upon an  
 Account of being a Relation, for I was an orphan child, and I was I  
 go along with him to some one Mr. *Dumrie*'s Chamber, and what there  
 was, what Securities, or any other of that Nature before my eyes; I then  
 remember we did find several Things, several Land-Tax Policies which  
 Mr. *Reynolds* gave an Account of; I don't know what the Number was.

Mr. *Senj. Pryde*. Who took Possession of them?

Mr. *Parliament*. Mr. *Reynolds*, the Master in Chancery.

Mr. *Senj. Pryde*. By whose Direction did you understand that Mr.  
*Reynolds* took this Care?

Mr. *Parliament*. I understood it was by the Direction of the Court. He  
 came to me, and desired me to go along with him to see that no Person  
 meddled with any Thing, but what belonged to the Suits; and he took  
 them and locked them up in his Closet or Secret.

Mr. *Senj. Pryde*. My Lords, we have fought with this Evidence.

Mr. *Plummer*. I think he says, the Reason of Mr. *Dumrie*'s having so  
 much Money in the Hands of Mr. *Wijffe*, was, that there was a great  
 Sum of Money come in upon the Land-Tax: I desire to know, if Mr.  
*Dumrie* left this Money dead in the Hands of Mr. *Wijffe*, or if he had  
 any Interest in it?

Mr. *Parliament*. I know nothing of that. By way of Justification, he  
 said, it was unlikely he had so much Money paid into his Hands at that  
 Time; Times were so precarious, he did not know how to lay it out.

Mr. *Senj. Pryde*. I desire he may be asked, whether Mr. *Wijffe*  
 did actually keep Mr. *Dumrie*'s Cash, and the Cash of the Office?

Mr. *Parliament*. I believe he did, I knew but few Individuals of it.

Mr. *Senj. Pryde*. Whether he never heard him declare that Mr. *Wijffe*  
 paid him Interest?

Mr. *Parliament*. I never heard him declare he did: He never spoke to  
 me about it particularly.

Mr. *Lynches*. I desire he may be asked, Whether he can inform your  
 Lordships, how long Mr. *Wijffe* had been Banker to Mr. *Dumrie*?

Mr. *Parliament*. I can't say exactly how long; I believe ten Years.

Mr. *Senj. Pryde*. If the Gentlemen have done with this Witness, we beg  
 leave to call another, to prove that Care was taken to keep their Li-  
 berty that were in the publick Funds.

[Mr. *John Elphinstone* *James*.]

Mr. *Senj. Pryde*. My Lords, we desire that Mr. *Elphinstone* may inform your  
 Lordships, what he knows of any Orders or Directions given, in relation  
 to the Effects of Mr. *Dumrie* that were in the Publick Funds, and by  
 whom those Directions were given?

Mr. *Elphinstone*. My Lords, I have been to search the Books of the Bank,  
 the Bank-Score, and *Exchequer* Companies, to see what book *Flourish*  
*Dumrie*, Esq. one of the Masters of the Courts of Chancery had in the  
 Books of those Companies, and what Orders there were for stopping Mr.  
*Dumrie*'s transferring such Stock. My Lords, I went first to the Bank,  
 and searched a Book of that Company, called a *Ledger*, where Mr. *Dumrie*'s  
 Account was stated by way of Debit and Credit. I found in  
 that Book, a Memorandum written over Mr. *Lumley*'s Account in red  
 Letters, as follows: *Q. N. Transfer*. I likewise enquired, if there were  
 any Orders with the Court of Chancery, for stopping the Transfer of such  
 Stock? I was told by the Clerk, That he knew of none. I enquired of  
 the Clerk at the *Transfer-Office*, if there was any order of the Court of  
 Chancery, for transferring Mr. *Dumrie*'s Stock to Mr. *Edwards*, the suc-  
 ceeding Master? After some search, he brought me an original Order  
 signed *Parler*, C. dated 11 *April*, 1725. I have a Copy of that Order  
 in my Hand, whereby it appears, that all the stock and annuities, in the  
 Name of Mr. *Dumrie*, were ordered to be transferred to Mr. *Edwards*, on  
 the 12th of July 1725, was the Day after the Date of the said Order. I  
 found in the *Transfer Book* of that Company the Sum of 1339*l.* 15*s.*  
 transferred by Mr. *Dumrie* to Mr. *Edwards*, and Mr. *Edwards*'s Ac-  
 ceptance of the same. This is a Copy of the original Order. I afterwards  
 went to the *South-Sea House*, I searched the Book of that Company, and  
 in the Book marked *Letter D. N. 6*, Fol. 43*o.* where Mr. *Dumrie*'s Ac-  
 count is stated by way of Debit and Credit, I found a *Red* order over  
 Mr. *Dumrie*'s Account, which is as follows: *Stock not to be re-transferred*  
*without Order from the Court of Chancery (to be kept sealed), as from the*  
*Court of Chancery.* I also searched the *Transfer-Book* of the said Com-  
 pany, and I found on Book N. 5, Page 80, that on the 12th Day  
 of July 1725, 1339*l.* 15*s.* *South-Sea Stock* was transferred by Mr. *Dumrie*  
 to Mr. *Edwards*, and under the Treasury I saw Mr. *Edwards*'s  
 Acceptance. Mr. *Dumrie* signed the *Transfer*, and Mr. *Edwards*  
 signed the Acceptance. I enquired if there was any Orders for stop-  
 ping Mr. *Dumrie*'s Stock from being transferred.

Mr.















Your Lordships are pleased to observe, that Mr. Darn's Failure was at the first, and this Letter is *Adversely* following, before Mr. Darn's perjury. Let us come over, or any Discovery had been made of the Contents of his Office.

My Lords, The wife which the Honourable Managers say to be made of this Letter, was to little advantage, first being of the Masters' permission therein, make up and deliver an Account, that not according to the Direction they had received, and to advise Mr. Darn's coming up, would a Step in making up their Accounts, till after the coming of a Secretary, and making the Contribution, which I think, is not likely to be taken in about June 1722.

My Lords, The summer before than last January, and every Body at the House of Towns, the Account was not exacted at that Time, but Mr. Darn's Return to Lord's was sent by Mr. Cawthorne to the House, with such Directions for bringing in their Accounts.

My Lords, I must beg Leave to shew, that if the Contribution was all contained in by calling for it at Accounts, how comes it to pass that the Legislature, who never contributed, was not called upon, in a particular manner, to bring in an Account, which I did not observe was given, or so much as moved by the learned Managers?

My Lords, the true Reason why those Accounts were not brought in, was the insupportable Difficulty of such an Undertaking, of which, I am persuaded, no other Evidence need be given, than to reflect on the Proceedings, that have been of late in taking their Accounts.

But my Lords, a learned Manager was pleased to say, Why did this noble Earl keep the Office, if he was not able to do the Business of it? I hope your Lordships won't think the noble Earl was idle all the while; Every Body knows the great Variety of Business, and the continual Harass of a Chancellor in it. The ordinary Business of the Court of Chancery is sufficient to engage a man of uncommon Application: What a Fausset then, my Lords, must it be, when the necessary Attendance upon your Lordships, and at the Council Table, are both taken into the Account! Sure I am, my Lords, it can never be said, that there was no want of Time or Leisure for taking their Accounts.

My Lords, The next branch of the Charge is the Order for repaid to Mrs. Chish, which, it is said, was paid by the noble Earl's Direction, as to counsel the Deficiency: But pray, my Lords, does not the Article and Evidence both destroy the supposition? Could the Earl of Arden intend to counsel the Deficiency, when he exacted of London against marrying Mrs. Chish, in prospect of any more Money to be coming out of Darn's Office? "That this would be the last Payment (I give you the words) the very Words) he was to take to recover out of the Money paid into the Hands of Mr. Darn's, for the Repaid thereof was in danger of being lost, by Reason of the Difficulty in the Effects of Mr. Darn's."

In this, my Lords, a concealment of the Deficiency of a Payment of 1000 l. of the noble Earl's own Money, in order that the Salary should have no Satisfaction of a Deficiency!

But to go farther, my Lords, we shall find, that the Payment of this money did not proceed from any such loss money, as I may say, it is unconsciously neglected in this Article, but from a noble Manner of Generosity and Compassion.

Mr. Lockman, my Lords, represented himself as an undone man if he had not the money: He first intimated himself among the noble Earl's Servants, as a Person under the utmost Difficulties, and the heaviest Solicitations, which himself owns, are a strong Evidence of that Difficulties: When he had gained Access to the Earl, he told his Story in a moving manner, not without intimations of some desperate Relapses he might be forced to take if he had not the money again; the Time, that, in pure Compassion to his Difficulties, the noble Earl (whose Purse was always open to the unfortunate) was prevailed with to order him the Money. And we shall prove to your Lordships, that how little feasible forever he was of to great a Favour, yet at that time he expostulated himself in Terms of one the most highly obliged; and I believe when our Witnesses to these Transactions come to be examined, they will leave Mr. Lockman very little Credit with your Lordships, and will wipe away the most remote Supposition of affecting any Concealment by this Transaction.

My Lords, The last Branch of this Article relates to a Declaration said to be made by the Earl in the Court of Honor and City, and an Order made thereon for Mr. Edwards to enquire if there was likely to be a Loss of any Money deposited with Mr. Darn.

My Lords, The particular Occasion and Manner of that Declaration and Order have been fully stated by the Evidence we have already given of the several Judgments and Proceedings that have been against Mr. Parker and the Marquis, which I shall not trouble your Lordships with a Repetition of, it being sufficient for my Purpose in answering it as an Influence of Concealment, to observe, that the whole transaction was after the Accounts of the Masters had been laid before the Committee of Council, when it was too late, and so no Purpose to affect any Concealment.

My Lords, The last Branch of the Charge I am now upon, relates to the making Orders for paying to several Suits their whole Demand, out of the Effects of Mr. Darn's, without regard to that just Propriety to which the other Suits were entitled: And the Case of Edworthy was mentioned for this Purpose; that I did not observe the Gentlemen entered into any Proof of what was done in that Case.

My Lords, In Proof of this Article several Orders were read. First I appeal to the Evidence of Mr. Edwards, whether a bill was issued, upon his cross Examination, that it was but in one Case only to move the whole money was paid only, and whether that single Instance is a false in Proof of this Article, I shall follow to your Lordships.

But, my Lords, the true Answer is this: When the noble Earl and Mr. Edwards enquired one not if it is the Deficiency would be made good, and proceeded upon that Enquiry, that it was a strange Evidence he given (and I desire it may be applied to some of the other Articles) that they were under this Persuasion, that Mr. Edwards's making Payments without any Objection.

Especially, my Lords, when it is considered too, that Mr. Lightfoot, who was so averse at first to any Contributions, has, in that Letter which

has been read in your Lordships, mentioned several of his own Accounts as being paid the Deficiency.

And there was a Paper read and made good the same, as I have been already in it plain witness, that Mr. Edwards's repeated and natural to make the Orders in the manner that he has mentioned. The Nature of ordering money out of Contributions, is not to be said, as I have said for it at all cases, but the same when it is made to be done. And Mr. Cawthorne's taking an Affidavit of the Earl's Order, is only, that it was expected Effects would in Time come in to satisfy them, and all other Demands.

I would not, my Lords, be so bold to say that I am offered, as if I intended to dispute the Rule of Council, that has been laid down by the House, that, that where several Persons are Demanded money, the Common Fund that cannot suffer in a single, then ought to be taken Average in such Case. But what I shall beg Leave to say upon this, I am that Rule only holds Place when the way of money is not to answer in field and cessant. In this Case the Effects were a Contribution in, and therefore a Declaration of an Average, where there was likely to be no Satisfaction, would not, in my humble Apprehension, have been advisable or proper.

I beg Leave, my Lords, to add my Observations upon all the Articles relating to the Contents of Mr. Darn's Deficiency, with the following it to your Lordships Judgment, that the said Contributions do not speak itself as being on account of Darn's failure to receive to the suits their whole Demand, but on account of his own reason.

My Lords, My Lords, the Manager, when they entered upon their Accounts, pretended an Order made by the late Lord Chancellor, in the Year 1717, by which the Masters were obliged to bring in their Accounts, which as they said, he had been concerned with other Vices, and for very different Ends than I first appear, we think it will be extremely proper for us to begin a Discourse, in that Part of the Charge with a Witness when it is only to these your Lordships the real Design the impoached Earl had in calling for this Account, and his Evidence, we humbly conceive, will satisfy your Lordships that it could be for no other Purpose than that the Earl might the better keep the true State and Condition of their respective Offices, in order to find out a proper method of discharging such Grievances as were most apprehended at that Time. My Lords, it will appear by the Cause of the late Witness's Evidence, that the other Order that was made upon them afterwards in December following, in as strong Terms as the former, could be for no other Reason or Purpose than that his Lordship hath assigned in his Answer, that he might understand the State of the several Offices, so as to be able to apply proper Remedies to the Danger which was then desired. All this will appear yet more fully from the Evidence of another Witness, who is to inform your Lordships of the particular Declarations the noble Earl gave about the manner of obliging the Accounts, with the Names of the Causes of the respective Solicitors concerned in them, and also what the several Sums first paid in were, the Time when to pay in, and also when the same or any Part were paid out again, together with many other Particulars which his Lordship thought necessary for his more exact Information. It will be likewise made appear to your Lordships, how the Masters were severely consulted with about this Matter, and that the Assistance of the Master of the Rolls was at length called in. But all the Masters agreeing, and particularly Mr. Edworthy (who had been in the Office for twelve Years) that it was not to be possible to bring in their Accounts, as first directed, in any reasonable Time; then it was, and not before, that the noble Earl considered that they might bring them in at a different Manner. Now, my Lords, as to the suggestion that all this was only a Scheme made up of to enrich the Masters, into a Contribution towards Darn's Deficiency, give me leave to say it is impossible to collect the least View of that Kind from the Evidence laid before your Lordships on that Head; for the Masters who contribute on this Occasion, have all sworn that they put in as many moneys voluntarily, and without being any ways influenced by his Lordship's Threats or Persuasions, so far from that, that Mr. Lightfoot (the only Master who refused concurring in this Contribution) made an open Objection at first, and then that the Proprietor did give them from his Lordship, but from the other Masters; for in that Case he declared, that if it came from the noble Earl himself, he might have had more regard to it, and would have taken it into his Consideration. So that we dispute not, upon the whole, but it will plainly be made appear to your Lordships, that the entire Application which the noble Earl made from Time to Time to the Masters for this Purpose, proceeded from no other View, than that as soon as he might be truly informed of the State of their Offices, he should apply proper Remedies to whatever Abuses he should discover; and that as this was always his true Intention, so he would have put it effectually in Execution, had he not relinquished the Great Seal for this.

My Lords, My Lords, we shall read a Witness to shew, that after the 200 l. 2 pence was paid, the Accounts were called for; it cannot then be pretended, that this calling for the Accounts was to satisfy the Masters to pay this 200 l. 2 pence.

The first of the Payment of this 200 l. 2 pence was paid in August, this Accounts were called for in the Beginning of November.

(Mr. Cawthorne called.)

Mr. Sry. Prob. I desire Mr. Cawthorne would inform your Lordships, whether any Declarations were given to call in their Accounts about November, 1721?

Mr. Cawthorne. I did in November, by the Direction of the Earl, I writ a Letter directed the 20th Nov. 1721.

L. Ch. Just. Robt. Have you any Draught of that Letter?

Mr. C. I have a Draught, the Committee required me to leave the Letter with them.

Mr. Attorney. My Lords, we will do the noble Earl all the Justice we can; here are the Letters.

Mr. Ch. The first Letter is dated Feb. 24. 1720.

Mr. Lar. Who is it directed to?

Mr.



Mr. Cottenham. The Letter is directed to each Master, and this is the Letter.

S. I. R.  
I Am commanded by my Lord Chancellor to signify to you, that you do, with all convenient Speed, lay before his Lordship an Account as follows:

1. Of the Name of the Cause.
2. To what Court or Agent.
3. The Date of the Order.
4. For what Purpose the money was brought in.
5. How much was brought in.
6. When.
7. How much in Hand.
8. How much on Security.
9. How much paid out.

*A distinct Account of the Securities.*

1. Cause.
2. From whom the Security is taken.
3. What the Security is.
4. In what Name taken.
5. For how much such Security.
6. The total of the several Securities in the Cause.
7. In what Hands lodged.

*A distinct Account of Money paid out.*

1. Cause.
2. By what Order, and of what Date.
3. When paid.
4. To whom.

Your very humble Servant,  
14 Feb. 1721. P. Cottenham.

S. I. R.  
BY my Letter of the fourteenth of February last, I signified to you my Lord Chancellor's Pleasure, which was, that you should with all convenient Speed lay your Account before his Lordship; (the method whereof was to be in several Columns subjoined at the Foot of that Letter.) I am now farther to acquaint you, that his Lordship is very much surprised to find, that in all that Time no such Account hath been laid before him. And therefore hath commanded me to tell you, that it is expected to be delivered in on or before the last Day of this Term. And, if this is not complied with, you will oblige his Lordship (though very unwillingly) to think of other measures; which I doubt not but you will avoid, by a ready Compliance of what is a second Time required of you. And to the End there may be no mistake as to the method of your accompanying, I here subscribe it again at the Foot of this Letter; and am,

Sir, your very humble Servant,  
P. Cottenham.

7 Nov. 1721.  
To the left of my Remembrance, this Letter was delivered to ten of the Masters.

Mr. Lushington. Did you read it to them?  
Mr. Cottenham. No: I am going to give you an Account. My Lords, according to a *show cause* I kept at that Time of this Letter, it was delivered to ten of the Masters. To Mr. Rogers, Mr. Hunch, Mr. Fellows, Mr. Lightfoot, Mr. Broom, Mr. Hayford, Mr. Barrett, Mr. Godfrey, Mr. Gurney, and Mr. Ledwith.

Mr. Serj. Probyn. We desire that the second Letter in November, 1721, may be read.

Mr. C. The second Letter is dated 7 Nov. 1721. "Sir, by my Letter of the fourteenth of February last, I signified, &c. No. 47."

Mr. Serj. Probyn. By this it appears to be after the several 500 Pounds were paid in, the last 500 Pounds was paid in in August before, which shews, that these Accounts were to be delivered in for no other Reason, than that the Sumners should have Satisfaction as soon as a proper Remedy could be found.

Mr. C. Serj. I beg leave to make one Observation; here is—  
Mr. Lush. If they have any more Questions to ask the Witnesses, they may; the Observing is proper afterwards.

Dr. Sayer. I only beg leave to ask this one Question, to be better informed: The Letter recites, it is written by the Command of my Lord Chancellor: I would ask, whether my Lord Chancellor did give such Directions?

Mr. C. Yes, my Lords, he did.

Mr. Plummer. If they have done with the Question, I would ask Mr. Cottenham, in the Words of his own Letter, whether the Earl of Macclesfield did oblige the Masters to deliver in their Accounts in pursuance of such his said Order?

Mr. C. Of the Letter of November, 1721, I have kept no Memorandum; of the first Letter I have.

Mr. Plummer. Whether that Letter of 1721, was delivered to the Masters?

Mr. C. I believe it was.

Mr. Plummer. Then I desire to know, if the Masters did deliver in their Accounts?

Mr. C. I don't remember they did.

Mr. Plummer. I desire he may be asked, if after this Time that the 500 L. was paid in obedience to the first Letter, there was afterward any other Demand made upon the Masters for more money?

Mr. C. I know of no Demand made upon them, except the good 500 L. piece.

Mr. Plummer. I desire he may be asked, if he does not remember Mrs. Clancy's Affairs, and if that was not about 1721?

Mr. C. The Business of Mrs. Clancy was but in July last.

Mr. Serj. Probyn. I desire to be asked, whether, since no Account was called for after this last Letter, whether he did not understand the Reason to be, because he apprehended the Masters would make good Mr. Durner's Delinquency?

Dr. Sayer. My Lords, I submit to your Lordships, that Question is material as to what his Argument was, and as the 11th and 12th are Judges only upon Evidence of Facts, and not upon the Question of Apprehension as I said.

Mr. Serj. Probyn. Why you say that, I cannot say for myself.

Mr. Cottenham. I really can't tell the Reason.

Mr. Serj. Probyn. Whether he argued, that the Earl of Macclesfield, that the Masters would make good his Delinquency?

Mr. C. I saw your Lordships in Court.

Mr. Serj. Probyn. Therefore I desire to be asked, whether after this Time he received any Order to the Masters to give in their Accounts?

Mr. C. I can't speak particularly of the 11th Term.

Mr. Serj. Probyn. Whether that ever since, as mentioned in his Letter to be taken, were not signified to him, by the Earl of Macclesfield to say, that the Cash should be taken out of that House?

Mr. C. My Lord, all he said to me in his Letter, and desired I not to write this Letter; all he said was, he was sorry that the Masters had not brought in their Accounts as he required, and that if they did not bring them in by the last Day of the Term, he said he would take other measures: my Lord did not say to me what made other measures worse, when there it was to make an Order to them, and thus he should expect they would yield Obedience to it; all the Earl told me was no more than to write to the Masters that he would take other measures; what those other measures were, I do not know; but I apprehended it to be an Order his Lordship would make for obnoxious him to us.

Mr. Serj. I desire he may be asked, whether he did not himself apprehend by those other measures, the taking the money out of the Masters' Hands?

E. of Macc. My Lords, I submit it, whether a Question of this Kind is proper; he hath been asked what those measures were; he hath told your Lordships that he knows not; but he has said what he apprehended they were; if now any Fact occur to him that may give Reason for apprehending otherwise, let him acquaint your Lordships with it.

Mr. C. Your Lordships find you would take some measures; what I apprehended was, your Lordship would make an Order in form, if they did not comply with that Letter.

Dr. Sayer. My Lords, I beg leave to ask one Question: Whether the Masters, after this Letter was brought to them by Mr. Cottenham, did not represent to him the Difficulty of making up their Accounts?

Mr. C. There were several Particulars mentioned in the former Letter, there was the Cause to be named, &c. Some of the Masters told me, they had not kept their Account as to answer all the Particulars in the Letter; others said, it would take up a great deal of Time; others that the manner required was very difficult and tedious, and that it was almost impossible, so many cases were contained in the Letter, that they seemed to say it could not be done.

Dr. Sayer. I desire he may be asked, whether he hath any Paper of the method of accompanying required by the Committee, that his Majesty was pleased to direct to look into this matter?

Mr. C. I have not a Copy of it here. There is an original Order, if the Masters please to produce it, I left it with Mr. Lushington.

Mr. C. Serj. If the Gentlemen here, I hope they will produce it.

Mr. C. The original Order is of the third of November last, which I left signed by the Earl.

E. of Macc. This will come more properly under another Article: The Gentlemen, the Masters, will take care to look it out that it may be ready to show the Time.

Mr. C. My Lords, I have now found it; I can't say it is a true Copy, dated the third of November, 1721, signed Macclesfield, C. Let the several Masters—Am I to read it, my Lords?

Mr. Lush. What, the Order of the third of November last?

Mr. C. Serj. This Order cannot relate to this matter. We are now upon the second Letter in 1721. The Letter is framed in a strong Term, that it can't be supposed but the Earl was very much in earnest, and it can't be imagined as it intended to make the Masters comply in the Affairs of Mrs. Clancy and Ledwith, because that Satisfaction was but in July last.

E. of Macc. I desire, my Lords, to go a little back again, upon recollecting that the Question the honorable Manager was pleased to ask, about his giving me an Account that the Masters would make good the Delinquency, carries an Imposition, as if this method were dropped upon me: I desire he would inform your Lordships, whether he can be sure at the exact Time, whether this was before or after November, 1721?

Mr. C. I really can't be sure of the exact Time.

E. of Macc. How near was it to Mr. Durner's going out, and Mr. Edwards's coming into his Office?

Mr. C. Mr. Edwards came in in May, 1721. It was near his coming in.

E. of Macc. I desire to know, whether you can recollect the Time you did tell me of? Whether it was after November, 1721, or before?

Mr. C. My Lords, I several Times mentioned it as your Lordship before Nov. 1721, and I believe several Times after; but that I cannot certainly tell, nor can I be particular to a Day.

E. of Macc. Did you ever hear of it before the 500 L. piece was paid? My Lord. No, my Lords, it was after they had paid the 500 L. a-piece; but, my Lords, I don't know that they agreed to make good the Delinquency; I only told my Lord I thought they intended it.

Lord Trevor. He had proved two Letters sent by the Direction of the noble Earl. As to the first Letter he kept a Memorandum as to the Time; but no Memorandum of the second. I would ask him as to the Time, whether the Masters made that Representation of the Difficulty of giving in Accounts, whether it was before or after the second Letter, or between the first and the second Letter?

Mr. C. To both the Letters they still made a Representation of the Difficulty.

Lord Trevor. Then I desire to ask one Question more, that is, whether, after the Representation made after the second Letter, they owned that they had received the second Letter?

Mr.



Mr. Cottlegham. I surely believe that the second Letter was delivered to the Masters, as the other was, but I kept no Acknowledgment of it; I believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my Clerks with it to take a Acknowledgment; I expected after him; he had been gone from me, and I can't find him out; I surely believe it. I have no Reason to doubt but I gave it, the Masters know that.

Mr. Serj. Pryor. If Mr. Halford is called, he will explain it; on his Cross-Examination he admitted a second Letter was sent for him, and left in the public Office: This appears in his Cross-Examination.

Mr. Serjeant. It might not be improper (this Letter is before the Honourable Judge) to enquire if they had it not from some of the Masters?

Mr. Cottlegham. No, they had it from me.

(Mr. Halford called.)

Mr. Serj. Pryor. I desire he may be asked, Whether he had not any power of the Letter in November 1721, whereby the Masters were obliged to bring in the Account?

Mr. Halford. Indeed, my Lords, I do not remember that Letter.

Mr. Serj. Pryor. I desire he may be asked, Whether he remembers a second Letter about Accounts?

Mr. Halford. Whether it was a Letter or a message, I cannot tell; but between the first Account in February 1720, and the last in November last, I was called upon to Account, and had prepared an Account, which I delivered in November 1721, I do not remember any thing of it.

Mr. Serj. Pryor. How long was it after the Payment of it, 500 l.?

Mr. Halford. It was a good while after.

Mr. Serj. Pryor. That is all we contend for.

Mr. Halford. I believe not above a Year before the last.

Mr. Serj. Pryor. I desire he may be asked, whether after this Letter,

supposed to be in November 1721, his Account was ever demanded of him?

Mr. Halford. I did deliver it to my Lord an Account in November 1721; and I think a Year before November last, in pursuance of either a Letter or a message, I don't know which, my Lord required an Account; then I delivered an Account of money, not a Service in my Hands.

Mr. Serj. Pryor. Whether that was an Account in pursuance to that Letter, demanding and requiring it of him?

Mr. Halford. Not as I know of, indeed.

Mr. Lums. My Lords, as some mention hath been made of it, I think

it may be proper to know what he can say to it, whether he ever promised to make good the Deficiency of Mr. Deane?

Mr. Halford. I never did, my Lords.

(Mr. Cottlegham called again.)

Mr. Serj. Pryor. I desire he may inform your Lordships what he knows in relation to the Payment of the 1000 l. to Lockman, and what Conversation he had with Mr. Lockman?

Mr. Cottlegham. About the beginning of July last, to the left of my Remembrance, Mr. Lockman told me, that Mrs. Chitty had by Order upon Mr. Edwards the Master to pay her 1000 l. That she had been with the Master but could not get the money, and that he had spoke to my Lord Mansfield about it, and the Earl had promised to speak to the Master. And he desired me to speak to the Earl concerning it: I promised I would, and accordingly I did, he sent me to the Master. When I came to him, I spoke to him of it, he said he had no money; I informed the Earl of it, the Earl said he could not tell me to do. I informed Mr. Lockman of it, he seemed to be under the greatest Concern, and said, if he had the 1000 l. he was undone; he was going to marry Mrs. Chitty, and Mrs. Chitty would not marry him, unless his Debts were paid, and he had given him this 1000 l. to pay his Debts. He had compounded his Debts, and he repeated it over and over again, that if this 1000 l. was not paid, he was undone.

I have not seen a Gentleman in a greater Distress than he appeared to be; as which I told him, if he would please to have a little Patience I would consider the thing, and see what could be done. I did consider it; and it came into my mind that Mr. Lockman had not paid his 500 l. a quantity of the Earl with it, and said Mr. Lockman had not paid his 500 l. and if he could prevail upon him to do so, I thought it would be good to get 500 l. again of the other Masters, and that would do.

By the Earl's order, I attended Mr. Lockman, and told him that the Earl expected him to pay his 500 l. but I could not get a Penny from him; he refused to pay the 500 l. that proposal of the 500 l. a-piece dropt; I acquainted the Earl of this; he said he could not tell what to do. I acquainted Mr. Lockman, and told him I had done all that was in my Power to do, and that it was not to be done, unless he expected I should pay it out of my own Pocket, which I was sure he could not expect.

When I told him that, he said, I am undone, Mrs. Chitty will not marry me, his Royal Highness the Prince of Wales will not proceed me, my Creditors will throw me into a Goal, there I must rot and starve. He made use of so many extraordinary Expressions, and was under that Pain and Agony of mind, that I apprehended he would do himself a mischief. I could say nothing to it, I had done all for an unfortunate Gentleman that possibly I could do. Two or three Hours after this, when I was at Dinner, he came to me again, and told me the Earl wanted to speak with me immediately; he begged of me of all things in the World to go. On that I went to the Earl. The Earl was pleased to send for me into an inner Room, and said, that he was tired out of his Life by Mr. Lockman; I told him I was so too, I had no Rest Night nor Day for him; I then represented to the Earl his own Story in Substance as he had told me. The Earl said he was sorry to find Mr. Lockman brought to that State and Pass; I told the Earl I was afraid of the Consequence, I did not know what a deplorable Man might do, he seemed to be in the utmost Despair. Upon that the Earl ordered me to pay him the 1000 l. and said, he would pay it me again. When I saw Mr. Lockman, I told him I had now received Orders to pay him I had got the money by me, but he should have it in a little time, three or four Days would break no Squares; he said, I am ready to, provided it is paid. I said I had not to him, I must borrow it; I did so, and on the fourth of July I paid him the 1000 l. I think it was three or four Days after, he asked me what Reward he should give me; I told him that his Distress was so great that he should not give me any Reward; I would not take a Penny of him; and I never had the Value of

a Dish of Coffee of him; I paid him the money, I borrowed it for that

purpose. Says I, Mr. Lockman, it appears to me that you are in great Distress, I will borrow the money; I did borrow the money, and paid interest for it, merely to supply the Gentleman.

Mr. Serj. Pryor. I desire he may be asked, if he knows of any other Sum of money demanded by Mr. Lockman after this 1000 l. was thus agreed to be paid him?

Mr. Cottlegham. After this money was agreed to be paid, and, I think, the same Evening, I received this Letter from him, which any Gentleman that will may read. (The Letter read.) Sign'd Lockman. Monday Evening.

S I R, I AM very sensible of the Favour you have already done me, in paying me what my Lord is so oblig'd a Master was pleas'd to promise me, which kindness I shall gratefully acknowledge all my Life; But as there is so great a Summ'd, I hope you will pardon me the sooner in being once more troublesome, to beg of you to send me his Lordship's Order, that I may have it on Thursday Afternoon, between Four and Five, and let me have it on Friday Afternoon, between Four and Five, and send Mrs. Chitty in to wait on you for the other. I shall be very pleas'd on all Occasions to shew you how much Gratitude and Esteem I am,

Yours &c.

Yours most oblig'd

humble Servant,

A. Lockman.

Dated Monday Evening, no other Date. My Lords, Upon the Receipt of this Letter, the very first Evening I had it before the Earl, I told him that it appeared by this he wanted 500 l. more. The Earl said he was very much surpris'd at this Gentleman's sending such a Letter, he did not know what he meant by 500 l. more than he promised, and, in short, told me he could advance no more.

Mr. Serjeant. I desire he may be asked, whether he had any Discourse with Mr. Lockman, relating to this 500 l. after this Letter?

Mr. Cottlegham. I had a Discourse with him some time afterwards about the Letter.

Mr. Serj. Pryor. I desire to ask him, whether, after this Letter, Mr. Lockman came to know what Answer he would give him?

Mr. Cottlegham. Mr. Lockman came on the Thursday following, being the thirtieth of July; Mrs. Chitty did not come: And then I told him that I had received his Letter, and had said it before the Earl, and that the Earl understood on what he meant by 500 l. more than he promised upon him, and he would not give a Penny more; I thought he had been very generous to him, and I told him, I wondered what he meant.

Mr. Serj. Pryor. I beg leave to take notice, and your Lordships will please to recollect, that Lockman twice he never made any Demand of any money before the 1000 l.

Mr. Lums. That is to be observed when the Witness is examined throughout.

Mr. Serj. Pryor. I ask whether Mr. Lockman did petition my Lord Chancellor for this Sum of money?

Mr. Cottlegham. I don't remember Mr. Lockman petitioned, I believe not.

Mr. Serj. Pryor. Or Mrs. Chitty?

Mr. Cottlegham. Yes, Mrs. Chitty did, before the Payment of this 1000 l. as I remember.

Mr. Lums. Was there any Petition preferred before the Payment of the 1000 l. before the money was not paid according to the Order, which I think was dated March 17, 1723?

Mr. Cottlegham. Yes, I told you so before.

Mr. Lums. I desire to know, whether there was not a general meeting of the Masters before my Lord Mansfield order'd him to pay the said 1000 l. to Mr. Lockman?

Mr. Cottlegham. Yes, there was.

Mr. Lums. Whether it was not after the meeting of the Masters, when it was proposed to Mr. Lockman to pay his 500 l. and the other 500 l. again?

Mr. Cottlegham. Yes, I believe it was.

Mr. Lums. Mr. Cottlegham hath given a long Evidence, he hath told you on the Application for this 1000 l. he recollects that Mr. Lockman had not paid his 500 l. and if he could get him to pay his 500 l. and the other Masters 500 l. a-piece, that would make up the 1000 l. The Question I would ask it, if Mr. Cottlegham had then any Orders from the Earl of Mansfield to consent the Masters?

Mr. Cottlegham. No, I had then no Orders.

The first Order I had to convene the Masters together, was on a Monday, before Payment of the 1000 l. as I remember: Mr. Edwards was then at my Lord's House, and my Lord order'd me to speak to him in respect to the Masters, and they were conversed, and came to my Lord's House that Evening, as I was told, but that was after the money was order'd to be paid.

Mr. Lums. I desire Mr. Cottlegham may look upon that, and tell us, whether it is his Hand.

Mr. Cottlegham. This is my Hand (reads.) His Lordship can do nothing in it at present.

Mr. Lums. Do you remember any thing of this Petition being offered?

Mr. Cottlegham. Yes, I do remember it; it was a Petition of Mrs. Chitty preferred to the Earl, to be paid 1000 l. This Petition came in my Hands; the Earl said, he could do nothing in it at present, and this Order was upon it, my Hand.

Mr. Lums. Whole Petition was it?

Mr. Cottlegham. The humble Petition of the Deceased Elizabeth Chitty, Mrs. Chitty's Widow.

Mr. Lums. What is the Answer was upon the Back?

Mr. Cottlegham. His Lordship can do nothing in it at present.

Mr. Serjeant. We apprehend it is of consequence to have this meeting cleared. I desire he may be asked, whether he knows of any meeting of the Masters, and when, and what was done there?

Mr. Cottlegham. Yes, there was a meeting that Evening, but I was not present.

Yours &c.



E. of Macclesfield. By the Questions they have asked, they have taken it for granted as if he knew what was done at that meeting of the Masters; I desire to know, whether he was present or not at that meeting of the Masters?

Mr. Gresham. I was not; I said so before.

E. of Macc. Then I think he says the Day of Payment of this Money was on the Thursday of July? Mr. G. Yes.

E. of Macc. What Day were the Masters called upon to meet?

Mr. G. I can't be positive, but I think it was the Monday before Payment of the rascal. This meeting of the Masters was between the Order and Payment of the Money.

Mr. Plowden. I believe there is a Mistake in this matter; I desire to know of Mr. Gresham, whether Mr. Edwards was not by when he acquainted the Earl with this Demand, and proposed to him the method of paying it by Mr. Lightburn's good, and the other Masters' good?

Mr. G. No, no.

Mr. Plow. I desire it may be cleared then, and to ask him, if Mr. Edwards was not by when he acquainted my Lord Macclesfield of the Demand of the rascal?

Mr. G. No, Mr. Edwards was not by; When this rascal was directed to be paid, Mr. Edwards was in the House, but the Earl did not see him; when I spoke to Mr. Lightburn for the good, it was only between Mr. Lightburn and me; Mr. Edwards was in the House when my Lord spoke to me, and ordered me to speak to Mr. Edwards to convene the Masters together.

Mr. Serj. Pryn. I desire he may be asked, whether the rascal was paid before he made the Proposal to my Lord Macclesfield, that Mr. Lightburn's good, and the other Masters' good, would pay it?

Mr. G. The Money was paid afterwards, I have told you so before.

Mr. Serj. Pryn. Before the rascal was paid, whether did not you hear that the Masters refused to advance the further Sum of 5000 s.?

Mr. G. Yes, I told you so before, that Mr. Lightburn would not pay his good, so the other Masters did not pay their good; a-piece; this was some Time before the Payment of the rascal.

[Mr. Elphinstone called.]

Mr. Straus. My Lords, we desire Mr. Elphinstone to give your Lordships an Account of what he knows of the Application of Mr. Latham for this rascal.

Mr. Elphinstone. My Lords, Mr. Latham and I often had Conversation together before he received the rascal, upon the Account of Mrs. Glenny. He told me often that he had compounded his Debts with his Creditors, and if he could not receive the rascal, against a certain Day, on which he had engaged to pay it, he should be ruin'd and undone; and some Time after he told me, that his Creditors had been with much Difficulty brought to give him force few Days longer for Payment of the Composition, and that if he had a not then, he should be ruin'd and undone for ever; swearing by the blessed Name of God, that that Disappointment would be a Means of breaking off the Match with the Lady.

Mr. Serj. Pryn. Go on.

Mr. Elph. I can't be positive as to the Day, whether it was the same Day that he received the rascal, or Day or two before, but I then heard the noble Earl declare to him, that in Pay and Compassion to his Circumstances, and the great Difficulty he then labour'd under, he had Earl had given Duress to Mr. Collingwood to pay him the rascal, and about two Hours after, or something more, Mr. Latham came to me, and with abundance of Joy told me how much oblig'd he was to the noble Earl, for that he had reliev'd him in his Circumstances, by giving Mr. Collingwood Orders to pay him the rascal. He seemed to express this with an uncommon Pleasure, and did not at all doubt it would be agreeable to Persons of the highest Diffusion and Character to know it, and that he would make them acquainted with it. My Lords, I think it was on Friday last, in a Conversation with me and others here in the Painted Chamber, he declared he would rather have given me or these hundred Guineas or Pounds, than have been examined on this Occasion; and Lord, Damn it, it hath happen'd, this a silly Word or two I drop to the Solicitor on the other side. I asked him what it was? he said, it was his telling him he had received the 500 l. for Mrs. Glenny, by the noble Earl's Direction.

Mr. Serj. Pryn. After this Money was paid, whether he hath had any Dispute with him, and whether it was owned by him that it was out of the Earl's own Pocket?

Mr. Elph. Yes, many say many a Time, and with great Respect.

Mr. Plow. I desire the Counsel for the noble Lord may explain one thing: I think the Witness said, Mr. Latham said, He had rather give two or three hundred Pounds than have been examined. Whether the Witness did apprehend by what Mr. Latham said, that he comes an unwilling Witness?

Mr. Elph. No, my Lords, I did not say that Mr. Latham was an unwilling Witness, but that he told me and others, he had rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion.

Mr. Serj. Pryn. We shall give your Lordships no further Evidence on this Article; we shall now proceed to the sixteenth Article, which charges the Earl of Macclesfield, that in order to conceal the Deficiency in Drury's Office, and to prevent any public Enquiry, he did, from time to time, in Violation of the Trust reposed in him, make Orders on Mr. Edwards for Payment of the Money below due to several particular Masters, who had been oblig'd in the House of Mr. Drury, in obedience to which Orders several Sums were paid; that in regard to, or Consideration of the Proposals which the rest of the Masters were entreated to, out of the Effects of the said Mr. Drury, whereby many of the said Masters lost the Benefits of their proportionable share, so which in Justice they were entitled.

The Crime suppos'd in this Article is done by the Earl in his Answer; he had no secret Knowledge what Mr. Drury's Office would come out to be; he was under a full Persuasion that Effects would come in due Time, to make full Payment; and that the only Reason why

they were not paid in an Average, was because no Application was made by any of the Sutors for that Purpose.

Mr. Gen. Serj. As to the sixteenth Article, your Lordships observe there was a full Persuasion both in the noble Earl and Mr. Edwards, that there would be sufficient to pay every one; besides, I think he hardly need not above one Order, not more than this out as the Case of Glenny; your Lordships will please to observe, from the Evidence of Mr. Edwards, that the noble Lord who made these Orders was firmly of an Opinion, from the Accounts he had received, that the Deficiency would be made up, so likewise Mr. Edwards was then under the same Persuasion: We shall rest in here that it was no manner of Fault under such Apprehensions, to make such an Order as that was.

Mr. Justice. If your Lordships please, there is in the Cloze of the sixteenth Article a Declaration, suppos'd to be made by the Earl of Macclesfield, then sitting in Court, I had the Honour to be in Court when the Declaration was made: As I had the Honour to be in Court at that Time, I apprehend that what he said was—

Mr. Plow. If the Gentleman speaks as Counsel, he stands in a proper Place, but he comes as an Advocate, I beg he may come to the Bar and be sworn; I humbly appeal to your Lordships if it is not proper.

Lord. Ay, ay.

Dr. Sayer. If the Gentleman think it proper to insist upon it, the Gentleman is ready to be sworn.

Mr. Gen. Serj. The Gentleman's Character is so unquestionable, that we hope the learned Gentleman will not put this Difficulty upon him of taking an Oath in a Cause, wherein he is Counsel.

Mr. Plow. My Lords, I insist upon it, because thus I shall have the Liberty of asking some Questions, which I apprehend I have not now.

Mr. Serj. Pryn. My Lords, we submit it upon the Evidence that has been already given, he himself did declare these, when it came before him regularly, he would examine upon it, and the full Opportunity thus came before him in Judgment, he took part it into a method, and accordingly referred it to a Master, and all proper motions were taken.

Mr. Gen. Serj. My Lords, we shall, with your Lordships Permission, now proceed to lay before you what we have humbly to offer in Defence of the noble Earl as to the 18th Article. The Charge therein contained is as follows, that the Earl knew, that the Masters of the Court might and did dispose of, and traffick with the Effects of the Sutors; and the Proposals were made for recovering of it, yet the Earl neglected to enquire into the Accounts of the Masters, permitted, and encouraged them to employ, and traffick with the Effects of the Sutors, and took no Care that the Effects should be placed out, for an account of the Practice of the Masters, or that they should give such Security as was proposed; and thus it charged to be done with a corrupt View and Intention of making an unlawful Gain by the Sale of these Places, and to keep up the Price of them.

The Proof of these matters depends entirely upon the Testimony of Mr. Lightburn, Mr. Heford, and Mr. Kyngham, with the particular Reputation of whole Evidence, I shall not presume to trouble your Lordships after so much Time has been already spent; but shall beg leave to observe upon the whole, that there is not the least Evidence to support that Part of the Article, whereby the Earl is charged with permitting and encouraging the Trafficking with the Sutors Effects. So far from it, my Lords, that the quite contrary appears from the Evidence with Mr. Lightburn has given upon this Article. He has inform'd your Lordships that when a Proposal was made, in order to the making good the Deficiency in Drury's Office (which the Earl had confess'd to much as Heart) that each Master should out of the Sutors Effects in his Hands, place out a Sum of Money, the Interest whereof should be applied for that Purpose the Earl would not give the least Countenance to that Practice, by coming into the Proposal; but in plain Terms declared, he neither could nor would give any Encouragement or Direction for the Disposal of the Sutors Effects, for any other Purpose than their own Benefit.

My Lords, The Gentleman of the House of Commons are so sensible of the Defect of their Evidence as to this Point, that they come not to rely upon it, but are forced to fly to Implication for Assistance; and yet your Lordships are told that this Part of the Charge is a Consequence of the Earl's not having taken Care that the Sutors Effects were to be placed out, so to put it out of the Power of the Masters to make such an use of them; and that this Neglect amounts to a Permission and Encouragement to the Masters, to dispose of and traffick with them as they have done.

My Lords, if this Part of the Article is to be considered as a distinct, separate Charge, it is so obvious, of how dangerous a Consequence it would be to admit such argumentative Evidence only as a Proof of it, that I apprehend I need not trouble your Lordships with saying any Thing more to it, if it is to be looked upon as a Consequence only of some other Part of the Charge, as a mischief arising from the neglect of putting those Effects of the Sutors out of the Power of the Masters, to make full use of them, I am desirous at a Loss to know, why it is made a distinct, self-sufficient Charge; it may perhaps by that means furnish the Bulk of the Article, but we humbly submit it to your Lordships Consideration whether it at all increases the Weight of it?

My Lords, the Charge in this Article is not founded upon a bare Neglect of the Earl, upon an Omision only of doing what is conceived ought to have been done, for the Prevention of this misbehaviour of the Masters; that perhaps was thought too light a Ground for an Article of Impeachment, especially when the Neglect here complained of does not consist in the not redressing any particular Grievance, pointed out by the Complaint of any of the Sutors of the Court, but in the not making general Orders for the Reclamation of the Masters. Perhaps, my Lords, it might be thought, that such a Charge would have been sufficiently answered, by alleging, as the Truth is, that the Masters have only been censured by the Earl in the same Degree of Trust and Power in which he found them, and with which they were invested long before he presided in that Court: It may be too, my Lords, it might be consider'd, how wide and dangerous a Field for Impeachment and other Prosecutions would have been opened, by making it en-



aid in every act who had the Superintendency of an Office, namely, to neglect, or omit, the extraordinary new general Orders and Regulations, as framed to carry a Probability of preventing the Abuse of the under Ministers of such Office; and therefore it is, my Lords, as it may be presumed that the Earl's Behaviour in this Respect is allowed to be culpable, and unfair, and with an Intention of making unlawful Gain to himself, by the Disobedience of those Officers, and with a corrupt View and Intention to keep up the Price of them: So that it is not reasonable, or Negligence that the Earl should have accused of, but *Reckless* and *Corrupt*, and that if this is not made out, we must humbly submit it to your Lordships' Judgment, whether or no this Article does not fall to the Ground? But what Proof, what Evidence has been offered for that Purpose? None, my Lords, that I remember; but your Lordships are left to recollect it, by way of Argument, from the Earl's not having made use of proper Expedients to prevent this ill Practice; the Malfeas, by that means, were more at liberty to make a Profit out of their Office, which for that Reason sold at higher Prices, and therefore the Earl must be guilty of this Neglect with that View; a severe (though not a direct) Consequence indeed! Is the Prospect of Gain from abuse to certain as to tempt to thought? And are there no other Reasons apparent why the Earl should defer the Regulations in this matter? I need not put your Lordships to mind of the great uncertainty of a Commission in that high (though a petty) Station. And as the Profit supposed to be in View, depends upon the Death or Alienation of the Malfeas, which sometimes do not happen in a long Interval of Time; when the Uncertainty is added to the other, I appeal to your Lordships, whether it can be easily imagined, that any, even the most greedy Person, allowing him only to be in his Series, could be prevailed upon to hazard his Reputation and Quiet, upon such a distant, such uncertain Hope; especially my Lords, in the Necessity of so harsh a Conclusion be excluded, by its appearing that there were other means which might probably enough be the Reason, or Occasion of the Earl's not immediately entering upon these Regulations? To appear by what Mr. Liphagan has said, that the Earl was very willing and desirous of having these matters regulated; and that when he felt informed the Earl that he had something to offer to his Consideration in relation thereto, the Earl formed very glad, and highly pleased with the Proposal, and gave him all due Encouragement.

It appears, my Lords, that after some time taken by Mr. Liphagan, to discourse the Malfeas upon this Head, he wrote a Letter to the Earl, containing several Proposals for the regulating the Affairs of the Malfeas; and your Lordships will observe the time and manner of the Earl's finding out, and perusing the Malfeas to bring in their Accounts, which, notwithstanding the difference of Time that has been endeavoured to be given to us, we humbly still suppose is a great deal of time, in order the better to enable the Earl to Judge and regulate these matters.

As these were Proposals for regulating the Conduct of the Malfeas, in respect of the Suits, in several Circumstances, which the Malfeas were supposed to labour under, and in which the Suits too were supposed to be concerned, were represented to the Earl; and, amongst others, that money being ordered to be paid into the Hands of the Usher of the Court, instead of the Malfeas, which was represented as a Thing of ill Consequence, and dangerous to the Suits of the Court, as well as injurious to the Malfeas. It appears likewise, that it was thought proper, it was intended to make all these matters into Consideration together, that the intended Regulation might be entire, and not by piece-meal; and Mr. Liphagan himself was of this opinion, as well as Mr. Hayford. And this is alleged, that the Earl was credibly informed that the Sufficiency of some of the Malfeas was much suspected, and consequently that a more immediate regard should have been had to what concerned the Effects in their Hands; yet when your Lordships consider how that stands upon Mr. Liphagan's Evidence, that it was only a general Intimation, without naming any particular Person, and that Mr. Liphagan declared he had no certain Ground for such Suspicion; it will not, we hope, be thought a Fault not to single out that Part of the intended Regulation; especially when the same Witness informs your Lordships, that it was as impracticable for the Malfeas to have given an adequate, that is, a proper Security, as for the great Officers of the Exchequer, or the Treasurers of the Exchequer, or other great Companies to do so. And your Lordships will be pleased to think it well deserves Consideration, whether it was in the Earl's Power to compel the Malfeas to give such Security as they thought? And if it should be said, that if they would not have complied, he might have ordered the money out of their Hands; it will require Time to consider where, in such Case, he must have placed those Effects? It would have been an extraordinary to have required Security from the Malfeas which came in afterwards, and so to have cast them upon a Part defective from the others, when it was under Consideration to settle the whole. But, my Lords, the Event has shewn, that there was not so much Occasion for so speedy a Provision in this matter, for the Purpose for which it was then principally intended, which was the preventing the Malfeas from encumbering the Securities of the Suits in their Hands, since there is no Occasion of Complaint in that respect, they having been all delivered up, and the Deficiencies which have happened have been in the Cash in their Hands, of which there was then so little Application or Likelihood, that the preventing it was one of the Things incident upon Consideration. So short-sighted and uncertain is human Providence! To differ the Judgments made of Things in Prospect only from which we have Experience to learn on Questions, but your Lordships will have a due Regard thereto, and make all equitable Allowances on that Account.

Your Lordships have been further informed, that in order to settle Malfeas matters, several meetings were had, and among the rest, one very solemn one, at which were present both the Earl and the Master of the Rolls. I need not trouble your Lordships with a Recitation of what passed there; it is sufficient to observe, that nothing being settled, the Earl, whose mind was intent upon this Affair, proposed some Expedients to facilitate matters; particularly, that if the Malfeas would quit their Possessions to a co-ordinate Power of Jurisdiction with the Master of the Rolls, that matters might be made clear, in respect of the ordering the Systems of the money: But this would not be complied with. And

when it was found by Experience impracticable to bring any thing about, with the Agreement of the Parties, the Earl declared that he would take the whole matter into his Consideration; and since he could not have the Concurrence of others, he himself would regulate these matters as soon as he could. Upon the whole of the Evidence offered upon this Article, more especially from what Mr. Liphagan and Mr. Hayford have said, it plainly appears, that for a considerable time past, even from the latter End of the Year 1727, there has been an Intention of regulating the Office of the Malfeas of the Court of Chancery; that such Intention has been formed, and several Steps taken, and Endeavours used to bring it to Effect; and your Lordships, I hope, perceive the many Difficulties that have intervened, and will not be at a Loss to find Reasons for the Earl's not having actually made these Regulations, very different from the distant View of an unjust Gain.

My Lords, the Benefits of Reformation, however desirable it may be, in all Instances attended with Difficulties, and in the present Case those Difficulties have been increased by the different and jarring Interest of the Parties concerned; which, at last, prevented their Concurrence in such Reformation, and in a great measure deprived the Earl of the Benefit of the Advice of those who were the most able to inform him what was fit to be done.

Your Lordships are sensible how great a Portion of the Earl's Time must necessarily be taken up in the Dispatch of the ordinary Business of the Court, and in his Attendance upon the public Functions of his Office; and if, under those Circumstances, he has not been able to bring his good Intentions to Effect, and complete them, before it was put out of his Power to do, your Lordships, we hope, will think it more his Misfortune than his Fault, and that he is not to be reputed guilty of any Neglect or Omission in that respect, which can be adjudged to be criminal. We shall not trouble your Lordships with any Evidence upon this Article, but submit it upon what has been already offered.

Mr. Raiton. May it please your Lordships, The last Article which the Malfeasers for the Honourable House of Commons have been pleased to close this solemn Prosecution withal, is the Nineteenth; wherein they have endeavoured to represent the Earl as desirous to abuse and impose upon his most sacred Majesty, for the Sake of increasing and augmenting the Malfeas from a preliminary Enquiry, and to keep up the Price and Credit of their Office.

But, my Lords, we humbly hope no Evidence appears to have been given that does, in the least, support or prove any such Designs in the Earl.

'Tis true, indeed, that when his Majesty was graciously pleased to order the Malfeas Accounts to be laid before the Committee of Lords of the Council, in order to inspect the same, that the Earl, in Obedience to his Majesty's Commands, thought he could not be too anxious in giving Orders for their preparing and getting the same ready, and therefore ordered them immediately to set about it.

And when some of them objected, that 'twas impossible to have them ready by the Time expressed, the 16th of November last, especially Mr. Hayford's, which was to be an Account of twelve Years, that the Earl however ordered them to be got ready in the best manner they could, and told them, that if it should appear they wanted more Time to make them perfect, that on Application it would, without doubt, be granted.

Mr. Raiton. May it please your Lordships, That at a meeting of most of the Malfeas at Mr. Edwards's, where Mr. Cunningham came in, he proposed to them, some five, three Things, other two; but all of them agree in Substance, that 'twas to have their Accounts and Securities inspected, and to produce the Balance of Cash in their Hands, if it should be required.

And as to the inspecting of their Accounts and Securities, your Lordships have been pleased to observe, that not one of them appeared to make any Difficulty or Objection to it, but, on the contrary, readily consented and agreed to it.

But as to the producing their Balance of Cash, they were something startled at that, as not knowing what was intended by it; and therefore asked Mr. Cunningham if they were only to produce of them, or if 'twas going to be taken away from them.

And though Mr. Cunningham's Answer was, that they were only to produce it, as he understood, yet several of them appeared to be very jealous that 'twas going to be taken out of their Hands; and Mr. Edwards, one of the Malfeas, expressly said so, and therefore advised them to get it ready as soon as they could.

But your Lordships have been pleased to observe, that whatever they understood by it, yet not one of them said, or so much as intimated to Mr. Cunningham, that they were not able to answer or make good their Balance of Cash, only that some of them had not it ready immediately; and Mr. John Browne said, it could not be expected they should keep it all by them, for fear of having their Throats cut, and that therefore they must have some reasonable Time given them to raise it in; and Mr. Cunningham expressly says, that he apprehended they all said they were able and sufficient to produce their Cash and Effects.

And, my Lords, it seems very natural and reasonable to believe that they did say so, or at least that Mr. Cunningham understood so, because when some of them asked, whether they were to produce it in *Spain*, or whether Bank Notes, or Goldsmith's Notes would not do as well, he made Answer, it certainly would do as well, and therefore advised those that had not such Notes ready by them to provide them, and to send by and shift one another.

Now, my Lords, with great Submission, all this seems to be a very natural, plain and artless Representation of this meeting: And when Mr. Cunningham had thus acquainted the Malfeas what was expected from them, and had Assurance from them all, that they were ready and willing to comply with what had been proposed.

Can there be any room to doubt but that the noble Earl was very well pleased with this Account from Mr. Cunningham? And therefore when they met after, at the Earl's House on the 20th of November, no wonder he did not particularly ask them the Question, whether they were able and sufficient to make good the Balance of the Cash, for this Mr. Cunningham had before assured him they were, and therefore no Need for the Earl to ask the Question over again?

And



And Mr. Lenthall, not of the Masters, swears expressly, not only that he himself was ready and willing to pay and produce his own Balance, but that, from what passed at the Earl's House, he believed or thought all the rest of Masters were so too.

Now, my Lords, if this be so, if the noble Earl was fully satisfied that all the Masters were able to make good their Accounts, and he was just then going to lay a State of them before the Lords of the Council; is it at all to be wondered at, that his Lordship should give them his Advice or Opinion what Form of Words or Subscriptions he thought would be most proper to express their meaning by?

And is he approved of the Form made use of by Mr. Hayford on that Occasion, Was it, or could it possibly be any Crime in the Earl to advise the rest to subscribe, or under-write the same Form to their Accounts likewise?

And your Lordships have been pleased to observe, from the Evidence of all the Masters, that not one of them made any Scruple or Difficulty of it, but went into another Room, as if they were really going to under-write the very false Subscription to their Accounts.

'Tis true indeed, my Lords, some of them, who they were got by themselves, were conscious they could not come up fully to it, and therefore varied the Form as best suited their own Circumstances.

But your Lordships have been pleased likewise to observe, that the noble Earl was so far from being in any Place with the Masters to deceive his Majesty in the Lords of the Council, that he took their Accounts, with the Subscriptions thus had under-written, without so much as ever looking so far as they were conformable to Mr. Hayford's Subscriptions, and apprehended they really had been all the same, till upon reading them before the Lords of the Council, the Variance between them appeared.

But your Lordships have not heard of one Word of Regret given them by the Earl afterwards, for not observing his Direction in making the Subscription he desired.

If he had had any Design of imposing on his Majesty or the Council, by getting the Masters to under-write such a particular Form of Subscription to their Accounts, would he not have been very careful, before he carried in those Accounts to the Council-Board, so have seen that they had exactly pursued his Orders for fear of a Discovery?

Now, my Lords, can it possibly be imagined but that when he came afterwards to find they had deceived him, and had not under-written the Subscriptions, they pretended, and went out of the Room seemingly on purpose to comply with.

I say, my Lords, can it possibly be imagined, but that if the Earl had had any Views or Design of his own or of it, he would have sensibly acted and represented them afterwards for not observing his Direction: But your Lordships have not heard of one Word or Proof that the Earl complained of, or ever said any thing afterwards to the Masters about it.

Now, my Lords, if this be so, can there possibly be a greater or stronger Conviction of Circumstances to show, that the Advice or Encouragement which the Earl afterwards gave the Masters to affirm and supply each other with money and effects, and represented to them that it would be for their Honour and Service to appear able and sufficient; I say, my Lords, can any thing in the world be more monstrous than to imagine, that by this the Earl meant to advise them to make a false Shew and Appearance?

They had before assured him, or given him the strongest Reasons possible to believe, that they could make a true Shew and Appearance. Why then should he advise them to make a false Shew and Appearance? What End or Purpose in the World could this serve, either for themselves or his Lordship?

'Tis surely, my Lords, could never be the Earl's meaning; or if it was, whilst he was under a Persuasion that they were all able and sufficient to answer and make good the Balance of their Accounts, if he meant to advise them to make a false shew and appearance, it must have been by advising them to conceal Part of their Cash and Effects, for fear the World should really take their Words, and be of Opinion that they were as able and sufficient to make good their Accounts, as they had under their Hands acknowledged themselves to be.

But, my Lords, as the Construction the other way is not only most natural, but also consistent and agreeable with all that had before passed on that Occasion, surely, my Lords, it must be a strange working and perverting of Words to understand them otherwise.

The sum of this whole Article, my Lords, is this: The Masters were on a sudden call'd upon to bring in their Accounts of Cash and Effects, and they did so, and declared, at the same time, that they were able and willing to make good the same on a reasonable time given them for raising the Money; but being afterwards called upon for their Money sooner than they expected, and applying to the Earl for his Advice and Direction what to do in it, he advises them to affirm and supply one another with Money and Effects, till their own could be gotten in; tells them it would be for their Honour and Service to appear able and sufficient, and that he would not have them let the World see, at a time when there had been so much Censure and Noise about them, that they were not always ready, even at a Minute's Warning, to make good their Accounts.

This, my Lords, is the whole of this grievous Complaint against the Earl, and as it seems to be nothing but a Piece of good Advice in the Earl given to the Masters for their own sakes, in great Sincerity and Friendship, as the Earl expresses himself in his Answer, without any possibility of Advantage to the Earl himself, we humbly hope your Lordships will not think it worthy of a Place in this Impeachment.

Mr. Com. Serj. My Lords, we shall not give your Lordships much trouble on this Article, we shall only call Mr. Hayford.

[Mr. Hayford said then appearing, Mr. Cottingham was called in again.]

Mr. Com. Serj. My Lords, I desire that Mr. Cottingham may inform your Lordships on the Time the Masters had the Letter which he refers to, and which he delivered when the Accounts are directed to be brought in? We did desire Mr. Hayford to bring it up with him: If Mr. Hayford hath not the Letter, and it is not among the Masters, we must examine Mr. Cottingham about it.

Lord Ch. Jus. K. My. Mr. Hayford is none.

Mr. Com. Serj. This is the Copy of a Letter, the Original of which

Mr. Hayford hath; if he hath it not here, I hope your Lordships will give leave to read the Copy.

My Lords, I desire that Mr. Hayford may give your Lordships account of this Letter.

Mr. Hayford. My Lords, I have it not; Mr. Kynaston did inform just now that he believed it might be in his Custody, but he hath it here.

Mr. Serj. Prætor. Your Lordships will give us leave to examine Cottingham.

Mr. Com. Serj. My Lords, there was an Order made, dated the 30 of November last, of which my Clerk made a Copy. I can't say I examined it myself. The Order is,

Let the several Masters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the MONEY in their Hands, therein distinguishing, in several Columns,

The Names of the Parties to the Cause.

The Dates of the Orders for bringing in Money or Securities.

The Time of bringing in each Sum.

Particularly expressing the sums transferred and paid to them at the coming into their Office in the first Place.

How the same hath been disposed.

What Sums paid out, and to whom.

What invested in Securities, - } When, and by what Order.

Specifying the Securities, by Dates, Numbers, &c.

Where the Securities are at present.

What Money remains in their Hands.

Where the same now is.

Nov. 3, 1724. MACCLESFIELD, C.

Mr. Com. Serj. My Lords, we beg leave to observe, that this Order is very much the same with the Directions given by the noble Lord before to bring in their Accounts; but, upon the Nature of the Thing, they seem to be a very good Reason why they did not comply punctually with it.

Mr. Phoenix. Upon this Observation, my Lords, I beg leave to ask this Witness, Whether the Masters have not given an Account, not withstanding the Difficulty of the method?

Mr. Com. Serj. Yes, my Lords, they have.

Earl of Macc. Mr. Hayford will inform your Lordships of this.

Mr. Hayf. I believe this is a Copy of the Order given by my Lord Macclesfield for bringing in our Accounts in November last.

Mr. Serj. Prætor. I desire he may be asked, whether the Masters were able to make up the Accounts pursuant to the Directions given in this Order?

Mr. Hayf. I believe it was the next Day after this was sent, that Mr. Cottingham did inform me of it; I had not then it, I was then at Ipswich, sitting in Court with my Lord Macclesfield, after the Court was up I went into the little Room behind the Court with my Lord, and I did say, I thought it would be very tedious to do exactly as this Order directed, he said it would require a transcribing of every Particular that each Master in the Court had ever paid and received for several Years, even when Causes were ended many Years ago, and that I thought it an impracticable Thing. My Lord told me that such be no Objection to bringing in of the Accounts; if we could not do so well as he with it, we should do it as well as we could; and desired them to be ready, that they might be brought in by the Time prefixed.

Mr. Com. Serj. I desire he may be asked, whether there were any Arguments used by the Court to encourage Dispatch in this matter?

Mr. Hayf. My Lord recommended it to me so he best to have the Account ready by the Time, I think he said it was to be delivered in to the Council by such a Day.

Mr. Com. Serj. I desire he may inform your Lordships, if nothing was said about making an excuse or Pretence for delaying the Accounts?

Mr. Hayf. My Lord did desire that they might be prepared according to those Directions, but said, This must be so Exact, for not bringing in the Accounts as well as you can by the Time.

Mr. Phoenix. When this Account was asked for, how long was it before it came in?—Mr. Hayf. Three or four Days, or a Week.

Mr. Phoenix. And you give them in complete and right, fully and ready.

Mr. Hayf. Yes, there were some little mistakes which were redressed afterwards, very small ones.

Mr. Com. Serj. By Reason of this Question that hath been asked, give leave to trouble your Lordships with asking another, Whether at the Account delivered in there was any thing more than the Balance of the Account?

Mr. Hayf. Yes, the Account I delivered in was an Account of every particular Cause, and of the Money and Securities in every Cause, and did add the Solicitor's Names in every Cause, as far as I knew; I believe all the others were so too.

Mr. Com. Serj. How were the others?

Mr. Hayf. I believe the others were the same, only not the Solicitor's Names.

Mr. Com. Serj. I don't mean that, but whether there was not the Balance of each particular Account delivered in?

Mr. Hayford. There was the Balance of the particular Causes, and the whole summed up together.

Mr. Serj. Prætor. I desire he may be asked, whether it was practicable to give in their Accounts in the method directed within the Time prescribed them?

Mr. Hayf. It was not.

Mr. Serj. Prætor. I desire he would inform your Lordships, whether they have not been call'd upon frequently to bring their Accounts?

Mr. Com. Serj. I desire he may be asked, whether they have been frequently call'd upon by the honourable Committee of the Council, so bring in their Accounts according to the said Method?

Earl of Macc. I desire he may be asked, whether after this Account brought in, and the Balance made up every Cause they have been since called upon to make up the Account according to the said Instructions or not?







ed for an old Dressed of gold. His Wife came to my Lord, who gave her Money for profess Substantial, and order'd me to take care that the whole Affair should be made up, and the whole Debt was cleared and discharged, and all the Costs and Charges paid out of his Lordship's Pocket. There are abundance of other small sums I might mention of the same kind, but it would be endless to trouble your Lordships with them. Then there is another matter which I mention to your Lordships, not so much for the Value, as for the Manner of doing it; a poor Gentleman residing at the Bar, had a Place given him, as he said, in Ireland, but had not Money to carry him over, and therefore only begg'd you to carry him over to Ireland; my Lord order'd me to remit him five Guineas, which he received, but afterwards he wrote word that he and his Family were ill at the Time, and therefore had expended the Money, and wanted the same Supply again; my Lord then order'd me to remit him ten Guineas more, which I did. Here is at your Lordships Bar one Mr. Saunders, a Clergyman who hath for 75 years received of his Lordship's Favour whilst a Youth, and upon the Foundation in the Charter-School; and when he went from thence to the University his Lordship gave him fifty Guineas; and afterwards, when he was near going into Orders, remitted him fifty Pounds to clear all matters in the University, which I sent to Dr. Bentley by his Lordship's Order. I don't mention several other Particulars, but they are very numerous, both what passed through my Hands, as well as others of his Lordship's Servants; hardly a Week passed without some Instance of his kind.

Mr. Gen. Serj. As you was under the Great Seal, you can inform us, my Lord, when Clergymen were admitted to their Livings, whether his Lordship has not frequently order'd their Fees to be remitted them?

Mr. Coker. My Lord frequently gave Orders to remit the Fees of his own Officers, and at other Times his Lordship paid the Fees of the Parson Officers and Stewards out of his own Pocket; and hath given the Clergymen Money besides to pay their Journeys to their Livings, and otherwise to sustain them, and to buy Books.

Mr. Gen. Serj. Do you remember Mr. Hays?

Mr. Coker. My Lord Hays was greatly indebted and in Prison; his Lordship discharged him, and paid forth Debts as were inflicted upon, to the Value of about ninety Pounds: Is he there to give your Lordship a particular Account?

Dr. Sayer. As a great deal depends upon the manner of doing these things, I would affirm as to the manner in which they were done, whether in an officious manner, or how?

Mr. Coker. My Lord did these generous Actions merely as they fell in his way, and without mentioning them, or letting them be known, as far as I could ever perceive; so that where I did not apply to his Lordship myself for such People as came to me, I never knew it but by Accident, and in Cases where I was prevail, my Lord generally gave me more than was asked, his method being, as far as might be, to let Persons entirely free, and to do them a full Service.

[Mr. Hunt, a Clergyman, rises.]

Mr. Serj. Preys. My Lords, we desire that Mr. Hunt would recollect and give your Lordships an Account of what charitable Acts he hath known done by the Earl of Macclesfield?

Mr. Hunt. I have known my Lord to be a very generous and noble Patron: I can speak from several Instances, relating not only to myself, but to several other Gentlemen of the University of Oxford. The first Time I had the Honour of being known to his Lordship, was about 1713, upon the Recommendation of one Mr. Thornbury, Vicar of Thame in Oxfordshire. The Noble Lord said Mr. Thornbury what Persons he knew in the University that were inclined to be diligent: Mr. Thornbury was to find or mention me as one. Upon which his Lordship sent for me to dine with him the Day after; I carried him some of the private Exercises that I had done in the University, which his Lordship read over, and was so kind as to approve. His Lordship kept me with him several Days, and desired to have more Conversation with me; and he desired me with a generous Prefect of twenty Guineas, telling me he should be glad to find me where he came to Shrove, and that he desired to make me a Prefect now and then till he could do something else for me. About Christmas after was the next Time I waited on my Lord: I carried him again some of my University Exercises, which his Lordship perused, and was so favourable as not to refuse them: His Lordship desired me as that Time with another generous Prefect of twenty Guineas, and further Assurance of future Favours. About this Time I had received a Letter from Mr. Gwynne, Deputy Professor of Arabic in the University of Oxford, wherein he complained to me, that he had been ill used by some Persons in the University, for having sent a Poem in Praise of her Royal Highness. This I relate to his Lordship, his Lordship respects a great deal of Concern for his Misfortune, pity'd his Case, and sent him by me a Prefect of twenty Guineas. The third Time I had the Honour to wait upon his Lordship was about 1714, when I received likewise a Prefect of twenty Guineas: I should have also mention'd, that I received other smaller Presents from his Lordship, five Guineas at one Time, and six Guineas at another. The last Time I had the Honour of waiting on his Lordship and receiving his Bounty, was about 1714, when his Lordship made me the usual generous Prefect of twenty Guineas, and was so kind as to find by me thirty Guineas more, viz. fifteen to Mr. Haddison, and fifteen to Mr. Gwynne; so that within the Space of two Years I received of his Lordship's bounty, for the use of myself and the Gentlemen of my Acquaintance, one hundred and thirty-six Guineas, upon no other Account, and for no Consideration whatever, but to encourage us in our Studies, and support us in the University.

Dr. Sayer. I would know whether the thirty Guineas were look'd upon as a single Bounty, or were it to be an annual Charity?

Mr. Hunt. I believe so, they said me they had received it as such before; we all looked upon several Benefactions as to be continued.

[Mr. Smyth, a Clergyman, rises.]

Mr. Serj. Preys. I desire he may give an Account of what he knows of my Lord Macclesfield's Charities.

Mr. Smyth. My Lords, in the Year 1721 there became vacant the Place of a Master of an Hospital in the Town of Galesbury, in the Dio-

ces of my Lord Chancellor, to which Mastership King James the First had annex'd the Care of Souls of a Parish adjoining, and which Parish had so other Provision for a Minister.

The former Master had taken no notice of the Parish, nor had any Care been taken time out of mind (as I have been informed by the first Master of the Parish) of either burying their Dead, or baptizing their Infants. My Lord Chancellor being (as I have been told) informed of this, sent me to know if I would accept of the Master's Place. I would not, I take, my Lord's Chaplain sent me word, if I would accept of the Place, and let him know my Christian Name, his Lordship would send me the Grant of it. I did so, and then my Lord was pleas'd to enquire into the Nature of the Thing. I informed his Lordship that no Care was taken of the Parish at all, that I approved the Master of the Hospital ought to take care of it. My Lord then was pleas'd to give me the Grant of the Hospital, and oblig'd me to a particular Care of the Parish; and at the same time desired me to let him know what Condition the Church was in. I informed him that it was utterly unfit for Divine Service; none had been performed in it (as I had been informed) Time out of mind; and the Parishioners were in such a Condition of Poverty, that they were not capable of making a fit for Divine Worship.

My Lord then was pleas'd to order me to acquaint him how much would put the Church in Repair. Upon this I thought proper to apply to Workmen for their Advice; and by their Advice I informed his Lordship thirty Pounds would do it. My Lord order'd me to get the Workmen at work, and he would pay their Bills. Before the Church was begun, through an Unhappiness, and the Custom of Workmen (as I thought) this thirty Pounds would not do. I acquainted his Lordship with it, and he desired to know how much more would do. The Workmen told me ten Pounds, my Lord order'd the Workmen to proceed, and they should be paid the other ten Pounds; but by the falling of the Wall, and other Accidents, this Money was not fill enough. I shunn'd to betray my own Ignorance, in suffering myself to be imposed upon by the Workmen (as I imagin'd his Lordship would think), I desired to pay by the rest of the Money myself, but being encouraged Dr. Sayer, I did inform his Lordship of the Condition we were in. I desired an unlimited Commission to let the Workmen finish the Work, and send up three Bills which they had done, which they did, and my Lord immediately sent the Money, which amounted to six. Dr. Sayer.

Dr. Sayer. I desire he may be asked what sort of Parish this is, and what kind of People the Inhabitants of it are?

Mr. Smyth. It is a poor Parish, but not numerous; there is not more than the Parish that is called Maller, nor one, I believe, able to contribute a Shilling towards a Work of this kind, without burning himself or his Family.

Dr. Sayer. I desire he may be asked whether the Earl has any relation to it, or any Estate thereabouts?

Mr. Smyth. He hath no relation to the Town, nor Seat near it, nor any particular Concern, that I know of, for any Man belonging to it.

Mr. Pinner. If my Lord Macclesfield thinks it decent to give this Evidence, we do not think fit to oppose it.

Dr. Sayer. The Charges laid out by my Lord Macclesfield have been to fit out Clergymen for Parishes, and to provide Churches for Parishes.

[Mr. John Meyer rises.]

Mr. Serj. Prob. I desire this Witness to inform your Lordships, whether he was not formerly a Jew?

Mr. Meyer. I was a Jew formerly.

Mr. Serj. Prob. I desire he would give your Lordships an Account of his Conversion, and what Circumstances of Life he was then in, and how he was relieved?

Mr. Meyer. I was, by several Mischances, and by the hardness of my Relations, reduced to great Extremities, after I was converted from Judaism.

Mr. Serj. Preys. After you were converted, what Charities have you received? Have you received any Collection made for you by any Person?

Mr. Meyer. I did apply myself to my Lord Macclesfield for Charity, the Recommendation of several worthy Clergymen: Upon which his Lordship was pleas'd to bestow upon me a Charity of fifty Guineas. I was set up in a way of living in the Parish of St. Andrew's near the Tower, then the Plague happen'd there, and I was built out, after which I had a dangerous Fit of Scurvy.

His Lordship sent an Account of the Scurvy, and sent me a second Relief of twenty Guineas. The first Time that his Lordship gave me fifty Guineas, he sent twenty Guineas to the Reverend Mr. Sless, who was Treasurer to the Society for propagating the Gospel in Foreign Parts.

[Mr. Edward Saunders rises.]

Mr. Serj. Preys. I desire he may give an Account of what he hath received of my Lord Macclesfield's Bounty?

Mr. Saunders. My Lords, in the Year 1711 the Duke of Somerset through the Inconvenience of the Earl of Macclesfield, put me into the Charter-House, where I was educated eight Years and an half; all which Time his Lordship furnished me with Books; and at my leaving of the School he gave me fifty Guineas for the better procuring my Studies at Cambridge: In a Year and an half after that, he gave me fifty Pounds. My Lords, this was not all, for when I acquainted his Lordship at my great new Orders, that I owed some Money at Cambridge, his Lordship was pleas'd to give me fifty Guineas more towards the discharge of my Debt.

[Mr. Thornbury, a Clergyman, rises.]

Mr. Serj. Prob. My Lords, I desire he may inform your Lordships what he has said of his Lordship's Charity?

Mr. Thornbury. My Lords, what I have to inform your Lordships of is this, that in the Year 1711, about the latter End of July, some Application having been before made to my Lord Chancellor by my Father, that the Honour to be lost for by his Lordship to London. When I came to Town as it was my only Business, he made me a visit with a visit Card to wait upon his Lordship, who was pleas'd to receive me with the greatest Kindness.



and Confession, telling me he had some Livings at that time in his Disposal, one of which he intended for me; his Lordship likewise offered, if I had a Mind to fix my Livings, he would be at the Expense of my Journey, and that I should have my Choice when I was come back; but I answered, I would refer that to his Lordship's Pleasure. In a few Days after, he ordered his Secretary of the Prebendaries to prepare a Presentation of me to a Vicarage in *Essex*, called *Nimble*. When the Presentation was sealed, and I had received Instructions to go and wait upon his Lordship for it, he was graciously pleased not only to give me the Presentation, but also discharged the whole Fee, and likewise made me a Present of two Guinea to buy me Books withal.

[Mr. T. Wither, and Mr. H. Finch called, who not immediately appearing.]  
Mr. Serj. Prynne. My Lords, I am told here a Reverend Prelate, who will willingly stand up in his Place, and give your Lordships an Account of what he knows of some of your Lordships's Charity.

[The Lord Bishop of Oxford stands up.]

Mr. Serj. Prynne. I deliver your Lordship would give an Account of what you know of this Matter?

Bishop of Oxford. My Lords, the Question put to me is concerning my Lord Archbishop's Benefaction and Disengagement to Learning in the University of Oxford. I am a good Witness of it; for my Lord some time since desired me to recommend a Number of young Men to him, whom I thought proper Objects of his Favour, and like to make useful and desirable Progress in Law, Physics, Divinity, or any other Branch of Learning. He said he was willing to bestow a considerable annual Stipend on them, for any other end but to enable them to buy Books, and encourage them to follow their Studies; and this without any Reward or Party, but merely for the promoting of Learning in the University. I recommended several Persons to him, and enquired into the Characters of some who were recommended by others, and have no Reason to doubt but that every one that was thought deserving had a considerable Allowance. I can't charge my Memory with particular Names, but believe his Lordship said he was willing in the whole, to expend this way four or five hundred Pounds every Year. This is the Sum of what I know; if your Lordships desire to be informed of any Thing more particularly, I am ready to give an Answer to the best of my Knowledge.

Mr. Serj. Prynne. My Lords, we have now gone through our Evidence, and I shall beg your Lordships Indulgence for the making some short Observations upon what has been offered in Defence of the noble Earl, now at your Lordships Bar; and as this Proceeding has already been drawn out to a very great Length, I am sensible it will become so, as it is much brevity as may be. I shall, however, before I proceed, beg leave to refresh your Lordships Patience so far as to say, that if in the Course of the Proceeding, any thing should be objected to me as an Advocate for the Earl, which might not be so exactly suitable to the respect and Reverence, which is due from every one to this august Assembly, I hope your Lordships will, in your great Goodness, impute it only to the Inadvertency, which the Variety of Incidents, and hurry attending Proceedings of this Nature, may reasonably be supposed to occasion, and as such excuse it.

We hope, my Lords, that what has been humbly offered to your Consideration, in behalf of this noble Earl, has made him appear a Person very different from what he has been represented to be by the Gentlemen of the House of Commons; and I am apt to persuade myself, that if they had been as well informed beforehand of what he had to say in his Vindication, as they were of what they had to object to his Conduct, your Lordships would have been freed the great Trouble occasioned by this long Prosecution.

It is, my Lords, the peculiar Happiness of our Constitution, to have in the different Parts of it, all the Requisites necessary and proper for the Preservation of the Peace and Welfare of those who have the good Fortune to live under it. In their, what Part it is, like Centinels, to watch and guard the Liberties and Safety of the People; who are the grand Legislators, to check into, and expost every Thing that has even the appearance of being hurtful or dangerous to the Liberties or Properties of those they represent; Vigorous, Warm, and I had almost said some times, and Patient, not altogether without Tenderness and Mercy, are the proper Characteristics of those, who by the Constitution are to determine and judge. And, my Lords, I may venture to say, that, to the glory of our Nation, all these Qualities have been exerted, and every Part of our Constitution hath exerted itself upon Occasion of this Proceeding: His Majesty's great Confession, in readily laying this Matter before his Parliament; the Zeal and Vigour of the House of Commons in examining into it; the great Abilities and Industry which the learned Gentlemen, who have had the Honour of managing the Indictment, have shewn, (they'll pardon me, I hope, for saying, I could have wished it had been attended with something like Harshness and Severity,) and your Lordships great Goodness and Patience, hitherto so conspicuous, and of the Continuance of which there is not the least Reason to doubt, are in many illustrious Proofs of it.

Give me leave, my Lords, to proceed further, and mention the Part which the noble Earl at the Bar hath had in this Affair. His Resolutions, when after his Evidence on that Purpose, he found the thorough Reformation of the Court of Chancery a Work too difficult for him singly to attempt, in laying the Affair before his Majesty in Council, the faithful and proper Orders he afterwards issued upon that Occasion, and Zeal in pressing to have them immediately comply'd with; I leave him to, we hope, some share of the Reputation and Merit of what has been, is likely to be done towards the Reformation of that Court. Nor will your Lordships be a Loh, to wait Cause to deride this Behaviour of Earl, notwithstanding the Representations which have been made of it, when you shall consider the ready Affection and Zeal for our Con-

stitution, which on all Occasions has so remarkably appeared in you. Your Lordships, no doubt, remember those Times and Circumstances, in which it was thought required not only good Will and Affection, but also Courage, to support and adhere to as the Continuance of our Constitution. Then it was, and for that end, that this noble Lord so eminently carried all these great Abilities he was Master of; and that with such Success, as gained him the approbation of his Majesty, who thought his Services so signal, as to justify his Munificence towards him, and his Goodness in making him to his great Honour. And can it really be thought, my Lords, that one so qualified, so affectionate, so distinguished, should enter into a wild Design of deriding both King and Parliament? Or that he should enter into it, and carry it on in so poor and indecent a manner, as is suggested in the Charge against him? In a manner so void of Thought and Contrivance, that it neither more of Modesty than any thing else. Suppose he could be thought capable of attempting in casual Matters that were so innocuous to every body, and that by a Means, which from the very Nature of it, must in some short Time have betrayed the Contrivance; yet surely, my Lords, his Fears and Apprehensions would have restrained him from committing himself in a Matter of so high Concern, without Diffinition, to so many Persons as were then supposed to be present; that he should publicly give such Orders as would evidently expose him to the Reformation of his Majesty, and both Houses of Parliament, in hopes that such a Secret would be kept by so many People as are supposed to be concerned in it; that he should, in a Charge of so extraordinary a Nature, as will require better Proof than what affords some uncertain Expressions, in Discourse with a Number of People at the same time, and that in so great a hurry and Confusion, that there was very great room for Misapprehensions, and where it was easy for one to mistake what was said to another, as if spoke to himself. And from hence it proceeded, as I presume, that the Account given of that Transgression, by the Gentlemen concerned in it, is so various and uncertain, that we humbly hope your Lordships will not think it reasonable to be relied on, as a Proof of such a Charge.

My Lords, the Foundation of this whole Complaint against the Earl is his Acceptance of Professions or Gratuities, upon the Disposal of Places, or, as the Gentlemen of the House of Commons are pleased to style it, the filling of Places, principally those of the Masters of the Court of Chancery. We have admitted the Facts, but without admitting those Circumstances which accompany it, as if those charged in the several Articles for that Purpose; and we hope we have satisfied your Lordships, that it was no ways illegal to add as the Earl hath done upon those Occasions. To support our Reasoning upon that Head, we proposed to shew to your Lordships, what the Sense and Opinion of diverse great and learned Men had been, in respect to the Law in that Point, from the very ancient Periods and Institutes. And we have that the Evidence in this case offered for that Purpose, hath plainly made it out, that the Earl hath the constant Usage of his Predecessors in this Office, as well as of other great Persons in other Stations, to constitute what he hath done upon such Occasions, and that without any Marks of Parliamentary Reformation. If this noble Lord should in need of an Excuse for having taken Pretext, how criminal would this be for that Purpose? For sure, my Lords, if it were allowed that he had erred in this Matter, yet after such great Examples, your Lordships would think it an Error only, and not an Offence, which deserved a heavy Censure.

The rest of the Articles have to do with a Relation to the charge of taking Money, being only Arguments of this Nature, under the several Circumstances that are stated, that I humbly apprehend, they do in a great measure depend upon, and will stand or fall together with it. And as the Evidence which has been given in relation to them, and the Objections made thereon, have been so full, and are yet so fresh in your Lordships memories, I will avoid troubling your Lordships with a needless Repetition of any thing upon these Heads.

My Lords, the Source of all the Evils here complained of in the Earl is supposed to be Avarice: Every thing is ascribed to an immoderate Thirst after Gain, an insatiable Desire of amassing Wealth. And great Endeavours have been used to persuade your Lordships, that the Earl was so wholly excited, so thoroughly possessed with this Vice, that he had nothing in View but to gratify it; and every single Action of his had a Tendency that Way. But sure, my Lords, the Evidence just now laid before your Lordships, shews a Spirit and Temper of Mind far different from that, and totally inconsistent with it. And now, I hope, will be objected against our having entered into a Proof of that Nature; there are some Occasions, and surely this is one, that will justify the most modest man in publishing his own good Deeds; and upon which even charitable Acts, as well intended, as they ought to be, buy'd as Silence, and known to none but the great Rewarder of them, may be withdrawn from their Privacy, and disclosed to public View.

My Lords, the Instances which we have produced are not of pompous Charities; we should then, no doubt, have been told that Vaunt and Ostentation had the greatest Share in them. Had they been a few Instances only which were laid before your Lordships, though for extending in Value, those which have now appeared, it would perhaps have been said, that these were Signs and Signs of Charity: But your Lordships will observe that these have flowed in a continual Stream, and can be owing to nothing but a constant habitual Benevolence towards mankind; a regular and continued Inclination to do good. And can such a Temper and Disposition of Mind be consistent with insatiable Avarice, with Corruption, and mercenary Cruelty, in spoliating and oppressing Widows, Orphans, and Landless, and such others who were under the Guardianship and Protection?

My Lords, we hope it will be thought amply for each opposite Sentiment to reign as the same Breath, at the same time; and that at least, where any thing may appear doubtful in the Earl's Words or Actions, not only the received Notion of our Law, of pretending always in Favour of Innocence, but the benignity of Temper in the Earl will determine



your Lordships to consider it in the most favourable Light, and never to interpose any thing harsh, which will admit of a sulder Contradiction.

The Cries and Tears of Widows and Orphans have been artfully introduced, to rouse your Lordships Compassion and Indignation upon this Occasion. It is no Wonder, my Lords, that Widows and Children should be frightened at the first Appearance of the Deficiency in the Summery Effects, which was represented in so terrible a View; but we hope, my Lords, the Terror is sunk with the Deficiencies, and that in a great Measure these Cries are hushed, and Tears dry'd up, now it almost appears (as we hope it evidently does) that no very considerable Loss is likely to happen to the Summery, and that the Prospect of its being himself still improves.

Under their Circumstances should your Lordships think [which we humbly hope there is no Ground to suppose] that the Earl has fallen into any misfortune, yet when his Majesty, your Lordships, and the Commons, have extended their Clemency to those Masters, who have been the acknowledged, the immediate Instruments and Authors of the Evils complained of, and of whatever may be prejudicial to the Summery; and the Legislature hath interposed, to preserve them in the Enjoyment of their Offices; we hope the Earl would not be the only Object on which your Lordships Goodness did not shine. We rather hope your Lordships will consider his misfortune; and when you look upon the High Eminency from whence he is fallen, and view him at your Lordships Bar, scourged with the severest Stripes the Tongue can inflict, and what can be more surprising, a punishment, from which he had some Reason to expect that his Relations to your Lordships would have protected him: I that these Circumstances will raise those generous Sentiments of Tenderness, which always dwell in noble Breasts. A Tenderness, no ways inconsistent with your Lordships Justice, to which the Earl cheerfully submits himself; and that in imitation of the utermost Judge of all, whose Vicegerent you are on this Occasion, your Lordships will in Judgment remember Mercy.

Mr. Osborn. I would not interrupt the Gentlemen that spoke last before he had ended; but I must now, before this Gentlemen goes on, inform your Lordships that an Incident hath happened, that the Managers think they are obliged to take Notice of. The Right Reverend Prelate is not by the Managers in the last Impeachment as in his Veracity, and the Truth of what he says, but in judicial proceedings, especially in a criminal Case, as this, the Managers think Witnesses of all Sorts are to be examined upon Oath; and, as I have said, that they have any Doubt of the Reverend Prelate's Veracity; but for the sake of the Precedent, and to prevent ill Consequences, the Managers think his Lordship must, as all other Persons do, give his Testimony upon Oath: Your Lordships have Precedents in the Case of my Lord Stafford and others. The Witnesses, if Members of your Lordships House, are to be sworn at the Table, and give their Evidence in this Place.

Mr. Serje. Peckham. My Lords, if it is insisted upon, that what the Reverend Prelate says should be taken as Evidence; we humbly apprehend, according to the Rule of Evidence, he is to give his Evidence upon Oath. And this being so material an Incident, and the Prosecution having proceeded to say, we humbly beg leave to put your Lordships in mind, that it is insisted upon in Point of Testimony, that the Reverend Prelate would be pleased to be sworn.

Lord Lubbock. No doubt but the Reverend Prelate ought to be sworn. It was not taken Notice of. If the Prelate be called upon as a Witness, his Evidence must be upon Oath.

Bishop of Oxford. My Lords, I should be very sorry to give any Offence to your Lordships; if the honourable Managers insist upon it that I take my Oath, and your Lordships direct me so to do, I am willing to give my Evidence upon Oath, as without it. I submit it to your Lordships, whether you will look upon the Journals, to see how the Precedents stand.

Lord Lubbock. If it be insisted upon to look into the Journals, the Parties must withdraw.

(*Thereupon it was moved, and the Bishop sworn.*)

Bishop of Oxford. My Lords, for the Advancement and Encouragement of Learning in the University of Oxford, I remember my Lord Macclesfield from time to time, told me he was willing to allow considerable Salaries to Persons that were skilful and sober; and that this should be done for the Advancement of any Sort of Learning in general, without restraining it to any particular Science or Faculty, and without any Relation to Party, provided the Persons were worthy: And I desire leave to own to your Lordships, that otherwise I would not have had any concern in it. I did, my Lords, recommend several Persons, when I thought proper Objects of his Lordship's Bounty; and as his Lordship's request, enquired the Characters of others, who had been before recommended to him, I have Reason to believe that several of these succeeded in his Lordship's Favour, and received benefit from him. I dare not say that the Defiance of Time, charge my memory with particular Names, but believe that the noble Lord assured me, he was willing, in the whole, to lay out this way four or five hundred Pounds a-Year. This, as near as I can remember, is the substance of what I said before.

Mr. Rabins. My Lords, I shall presume to take up very little of your Lordships Time, in observing on what has passed at this solemn Assembly of the two Houses of Parliament.

The Occasion of it has been to examine into the Conduct and Behaviour of a Member of your own august Body, during the Time he had the Honour to serve his most sacred Majesty in the High Office of Lord Chancellor.

And the Commons have faithfully discharged their Part, by emitting no one Circumstance or Ingredient, that could possibly serve to brighten and aggravate the Crimes they have thought fit so to lay to his Charge.

But whether, after all, the Mistakes, the Inadvertencies, the Example of others, and the Frailties even of human Nature itself, are not the whole, we sum total of all this solemn and pompous Trial, will I believe with many remain for ever the Question.

It would not perhaps be for the service of this noble Earl to go through every Step he took, every Advance he made, for the Benefit and Relief of the Summery of the Court where he presided, was the last that would possibly have been intended; 'twill, we hope, be sufficient to say, that he sincerely thought them the best: And if better have been first to know, which have proved more efficacious to the Summery, it only proves he was not to have been inflexible, which fairly is no Crime.

And of the Actions of his private Life, his Justice, his Piety, his Clemency, and his Compassion for others, may be allowed to call any thing of Reflection on his public conduct and Behaviour, I believe, my Lords, I may presume to affirm, that those who are acquainted with his Lordship in the case, will never be brought to think him criminal in the matter.

My Lords, I am afraid many are the Abuses, the Corruptions, and the Evils which have sprung up in our Courts of Justice, even to the Disparagement and Discredit of Justice itself. And Complaints of this kind have been made in almost all Ages, though at the same Time they have been justly placed to the Account of Justice of the lower, and most inferior Officers and Ministers, which are necessarily and unavoidably made of, in the Dispensation and Distribution of Justice.

And if an effectual Method or Cure could be found out for these of these who are to give the last Hand to the Completion of Justice were pure, the Streams would then run clear and unadulterated to the end.

But, till that is done, all Means are applied for the purging and clearing of the Channels, thro' which Justice must be conveyed, so to remove that the Fontains themselves look so, as it were, muddy, and polluted by Reflection.

But, my Lords, how desirable were these Ends may be, they are the Work of the Legislature, a Chancellor, or a Judge, may act by and lament, but they cannot help them.

They are only to be affected by that Power which has a Sort of Omnipotence, and when they are effected, I believe many will rejoice to congratulate themselves more, than the many learned, great, and upright Men, which preside in our several Courts of Justice.

In the mean Time, my Lords, as the Sentence which is prayed against this noble Earl will be of little Avail to stop the Mischief, as 'twill in some sort be a punishment of the Innocent, and letting the Guilty escape: we are too well acquainted with your Lordships just and rigorous proceedings, to be in any pain for this noble Earl.

Let selling of Places, taking of Profits, or any other the known and usual Proofs attending great Preference, be for ever abolished by a plain and explicit Law; and I believe I may presume to say, that no Complaints of this kind will ever be made more; that *Windsor-Hall* will never again be named as an Impeachment, and that your Lordships will have no trouble of this kind for the future.

But this, my Lords, I am sure I may venture to say, and I will say no more; that if it had been the Fortune of this noble Earl to have lived in such happy Days, his Name would never have been transmitted to Posterity in an Impeachment.

Mr. Strange. My Lords, we are now come to the Close of the Defence, wherein, to avoid Confusion, I have hitherto confined myself to the particular Part which was my Duty to open; your Lordships will therefore permit me to take Leave of this august Assembly with some few short Observations both upon the Charge and the Defence.

Your Lordships did for four Days successively sit to hear this noble Earl smother'd as the most corrupt, oppressive, and voracious Person upon a Earth: It was done so, my Lords, in a Manner, from which I should have thought the Relation he bears to your Lordships would have been a sufficient Protection, and without which the honourable Managers might very well have discharged their Duty to the House of Commons, in laying the Case before your Lordships.

But, my Lords, whatever Reflection this Treatment of one of your own Body might raise in your Lordships, I must for my own Part confess, that I heard it all with Pleasure; as it was an open Acknowledgment, that all honest Art and legal Liberty were necessary in aggravating the Charge, and justifying your Lordships with this Opinion of the noble Earl, that the Gentlemen of the House of Commons desire you would exert in such happy Days, his Name would never have been transmitted to Posterity in an Impeachment.

My Lords, the Charge is one general View, consists of an Accusation against the noble Earl, either for doing what his Predecessor did before him, or for not doing what it is not pretended they ever did: A singular Mischance to this noble Person, that the following fact given Examinations should an every Influence be impugned to him as a Cause.

As to the accepting Profits for Offices, my Lords, we have fully proved to your Lordships, that the same was done by the Predecessor of the noble Earl within the Bar; and we must humbly insist, that if the Statute of Edward VI. be taken as laying a Restraint upon that Predecessor having put the Case, and find what should his the Consequence, no Lordships cannot go out of that Statute to punish the noble Earl.

My Lords, it is the Misery (I may say the Slavery) under which other Nations groan, that the Punishment for Crimes is arbitrary and variable, and that so few come discharged from the smaller Offence may be put to undergo the most rigorous Punishment: But God be thanked, my Lords, we are not such as to visit his Malice, but that this People have Knowledge of the Laws Crimes here are fixed, and by, my Lords, are their Punishments; and give me Leave, my Lords, to say, that this is one of the main Charms through which our Ancestors have deliver'd down to us that Liberty, which is the Glory of this, and the Envy of all other Nations.

My Lords, the Act under your present Consideration puts the Case of accepting Money for an Office, and says, the Confiscation shall be the Loss of Nominations: There are no Words that exclude Officers who are not punishable by Law, or that they shall not be liable for the future, upon which to send a Prosecution by Impeachment or Impeachment; though if such Words were in this Act, I should find it hardly itself, that as well upon an Impeachment, as upon an Indictment, the Statute, and that only, must be the Guide in ascertaining the Punishment.

My Lords, the Articles have been so many Epithets upon the Act, as such as illegally, usurpously, extorsively, &c. But your Lordships will not find them in this Act of Parliament.











that usually attends Proceedings of this Nature, happened not to be introduced in these Particulars, that were extremely proper to have been laid before your Lordships upon this Occasion: Besides that the Variety of the Facts continued to be given in Evidence from one Day to another, has in this particular Case been carried on to such an unusual length, that they have not been able in the end to make themselves to present Matters of the Evidence, as the Importance of the Case requires.

I should trouble your Lordships with an Apology for my own Inability to supply this at present, both from the extreme Fatigue I have undergone during the whole Course of this Prosecution, and because that my last Illness has broken my Memory to a great Degree. But whatever Difficulties I have laboured under, when I consider your Lordships are my Judges, I cannot doubt but your Candour and Goodwill will have a due Regard to them, and make Allowance for the Want of Order or Accuracy in any thing I have to lay before you; and therefore, rather than sink any more Time of your Lordships for preparing myself, I will endeavour to go on now as well as I can.

My Lords, the Charge brought against me is very heavy, as laid in the Articles, and highly exceptionable by the Gentlemen that are appointed Managers by the House of Commons.

That which I think is charged as the Foundation of the whole, is, My extorting wicked and corrupt Purposes, to raise and procure to myself excessive and exorbitant Gain and Profit.

This it is that hath made me excessively and illegally take Money upon the Advancement of Matters, and Disposal of other Offices.

And the being fit upon the Claim arising from the Masters Places, with the Desire to advance it, or keep it up, is represented to be the Source of all the evil of the Things complained of, which seem to me to be charged only as Consequences for this Purpose.

This is such Corruption of Heart, and carries with it such a Malignity, that it makes every Action and every Omission criminal: Every evil Word, every Neglect or Imprudence, any Things possibly innocent in their own Nature, or perhaps excusable, are so infected by it, as to deserve the severest Censure and Punishment.

Whether I was in Expectation of the Application of the Statute, with Respect to *Dormer's* Debility, or myself endeavour to get it made good, or even yet my own Money towards it, it is all one, for wicked a Heart corrupts all.

And the Violation of my Oath as Lord Chancellor, and of the great Trust in me reposed, contrary to the Duty of my Office, is made the Aggravation of almost every Article.

I shall endeavour to show your Lordships, that the several things charged upon me are either not true, or not criminal; or if your Lordships shall judge otherwise of them than I do, yet that they were the Effects, not of Wickedness, but of Mistake; and if I have ever done any thing for the Service of my Country, or of the Convenience, or his Majesty, and of the Royal Family, and the greatest Establishment, and for the Advancement of public Justice, it might not be unprofitable to the unparalleled Goodness of this Reign, for your Lordships to have Compassion upon the Errors, Mistakes, and Weaknesses of the faithful, loyal, and devoted Servant of a Prince, whose Mercy has been so often extended, as to grant a Degree, to the best of his Enemies.

Before I enter upon my particular Defence, I beg leave to take Notice of something that has been said with Relation to the Answer which I have put in to these Articles of Impeachment, as concerning a Plea of a Pardon at the same Time that I will upon my Innocence; and its not being a full Answer to all the particular Charges in the Articles. As to the first, my Inflicting on *Mr. Mordaunt's* most gracious, general, and free Pardon for all things before the twenty-fourth of July 1721.

My Lords, I hope, and am myself of Opinion, that I have not done any thing that is criminal, or needs a Pardon.

But when so many Gentlemen of Learning and great Parts, undertake to make out, that I have a Crime which I thought and still think not to be, should I apologise to that Degree, and to be content that your Lordships will be of my Opinion, as to refuse the Benefit of a Pardon, which his Majesty has so graciously granted to all his Subjects?

When little Imprudence, and so many Omissions, and even idle Words, loose Talk, and unguarded Expressions, are laid to my Charge as Crimes, and made the Subject Matter of an Impeachment, and some of them charged without Intention of any Time, or the Name of the Cause in which it is pretended they were spoke, or my other Circumstances by which I might be enabled, either myself to retract or to make Equity of others, in order to prepare for my Defence, it had been Folly in me not to have taken Advantage of the Pardon.

And as for the Reflexion intended, to expose the Absurdity of pleading Innocence and a Pardon in the same Office; what is more consistent than to say, I ought not to be punished, because the Fact charged is no Offence, or if it be one it is pardoned. But had the Gentleman who made it, been pleased to have read the last Act of Grace carefully through, he would have found that it expressly provided, that the Pardon shall support the Plea of Innocence, and upon No guilty pleaded, the Act may be given in Evidence to prove the Person not guilty. And, in the Nature of our Law, it wipes away whatever Guilt there was, and leaves the Person innocent, that is, as a very great Lawyer and a very wise Man expresses it, *it takes away not only petition but law, the Guilt as well as the Punishment.*

As to the Reflexion made upon my Answer in another respect, as if it were not full and direct, and that in Chancery, the Court where I had pleaded, it would be held an insufficient Answer: Probably it might be so, but that is, because that I thought then it is a Right to require a Discovery of all such Facts as are material for his Advancing, upon the Oath of the Defendant. And therefore the Answer is not only the Party's own Defence, but it is to supply the Plaintiff with Evidence, who therefore may except to it as insufficient, for the want of being satisfactory, and giving an Account of all, or every material Circumstance that he

But do they imagine that to be the Case is a criminal Prosecution? Or that the Defendant there is obliged to furnish Evidence, or to confess any thing that may tend to assist or charge himself? No, my Lords, the Answer there is only for the Defence of the Person accused: And Not guilty is a full Answer.

And, my Lords, I insist upon it, I have given a full Answer to all the Articles at the end of my Answer, where I have pleaded the general Issue, and in express Words said, That I am not guilty of all or any the Matters contained in the Articles, or any of them, in manner and form as they are therein charged against me; which is of itself a direct and full Answer, without more.

And though I have set forth other Facts, it is only where I have thought some things might be further explained. But there is no need to make any Plea of a Word in my Answer, if the Charge in the Articles is not supported by the Evidence given against me.

And I will show your Lordships will be of Opinion, that though some of the Matters mentioned in the Articles are proved, and indeed some are expressly admitted by me, and others never disputed, yet that none of them is admitted or proved in such manner as it is charged in the Articles.

Having said thus much, I proceed to consider what has been offered in Proof against me.

My Lords, the Preamble of the Articles is intended for an Aggravation of my Crimes, by shewing what Oath I had taken, which I had violated, and what Favours I had received from his Majesty, and was not furnished with them.

As to the last, give me leave to say, that I can never express the Sense of my Heart for his Majesty's Favours and Countenance, and that it ought to be a high Aggravation, as I have stated them.

I pretend to no Merit, but that of a Heart full of Duty and Zeal for his Service; but his Royal Grace and Goodwill has exceeded, not only my poor Services, but even my Desires and Wishes.

And whatever becomes of me, in whatever State of Life I am, my Gratitude and Duty shall never abate.

As to the Violation of my Oath, no such Crime is made out against me.

The Oath of Office taken by the Chancellors when he enters upon that Office, has no relation to what is laid to my Charge. I have let it in rich notation in my Answer, and no Argument has been attempted to be drawn from it.

But it was laid the other Day, that I had taken an Oath upon the Statute of the twelfth of Richard II. which I had forgot, both in my Answer and in my Counsel.

As to my Answer, I beg leave to observe, that the Answer is failed to the Charge. I am not charged in the Articles to have ever taken any Oath upon that Statute, nor is the Oath supposed to be taken on the third of November at all mentioned.

The Words of the Preamble, which is the only Part of this Articles that mentions my taking any Oath, are these:

"And whereas Thomas Earl of Mordaunt, in or about the Month of May, in the Year of our Lord 1721, by the Grace and Favour of his Most Excellent Majesty, was constituted and appointed Lord Chancellor of Great-Britain, and did thereupon take the usual Oath for the due Execution of that High Office, whereby he did swear well and truly to serve our Sovereign Lord the King and his People, poor and rich, after the Laws and Usages of the Realm, and after God's own heart, now confessed, and the said Earl committed it in this great Oath," &c.

Where the *older Sir Mordaunt's*, as well as first particularly specified, are confined to what I did always take, that is, *upon my being made Chancellor in May 1721; at which my great Unluckiness, it appeared so. Nor did I at all imagine, that it referred to what was done the third of November after, which was but the same as had been done the third of November before.*

And accordingly my Answer is confined to the same Time that I was sworn Lord Chancellor before his Majesty in Council, the fourteenth of May 1721, when I took the Oath of Office for first in the Answer, and at the same time took the Oath of Allegiance and Supremacy. And there is no Pretence that I took any Oath upon the Statute of Richard II. at that Time.

The Words of the Answer are,

"That on the beginning of May, in the Year 1721, he the said Earl was, by his Majesty's great Grace and Favour, appointed Lord Chancellor of Great-Britain, and was sworn before his Majesty in Council the fourteenth Day of that Month; when the following Oath, being the usual Oath of Lord Chancellor, was administered to him, viz. 'You shall swear, &c. And the said Earl, at the same Time, took the Oath of Allegiance and Supremacy, but no Oath of Office holds that' &c.

My Answer therefore plainly relates to what was charged, and my taking no Notice of any Oath upon that Statute, ought not to be imputed to Forgetfulness, but to its not being charged. It is not charged, and therefore, not answered so.

But it is now insisted upon, and great Stress laid upon it, that at the naming of Shewings, which is done in the Exchequer upon the third of November every Year, I took an Oath upon the Statute of 12 Richard II. which extends to the Disposal of the Office of Masters in Chancery.

To judge of the Truth of this new Charge, your Lordships will be pleased to consider what it is that is yearly done the third of November, upon the Occasion of naming of Shewings.

The Managers were not pleased to open what piques every Year upon the Naming of Shewings, which had been so pre before they called the Witnesses to prove it; if they had, it might have freed me the Trouble of doing any Question.

But the Examination, and the Testimony of a Witness that spoke unadvisedly and low, tended, as I thought, to raise the Statute in mind in the Old Book of the Exchequer in *officiate Fines*, as it is read as hardly to be understood, so pale for the Force of an Oath then























in all 9075 l. and that Mr. *Kyngham*, two Years before him, gave his Predecessor 6000 l. and to the Great Seal 1775 l. in all 7575 l.

And Mr. *Eld*, a man of unblemished Character, of a good Estate, and not one Objection to his Finesse, is admitted, though he pays for every such Chart of what others had paid, and lets that was at the time then offered.

And of this that he paid 3400 l. was returned to him, and only 1850 l. returned.

I will not trouble your Lordships in relation to what my private Intentions were in that Trust; those if they were capable of being proved, I believe your Lordships would not dislike them.

When Mr. *Eld*'s Rebellion has been made upon the money being brought in a Ballot, as it is now for Privacy, and even to conceal it from Mr. *Comptroller*.

Witness plainly appears to have been without any Design, and only Mr. *Eld*'s seeking out of a Convenience he accidentally had in his Cha. lets.

But if there had been an Intention to conceal it from Mr. *Comptroller*, why was he the Head to convey any Thing? Why was he the Person to bring up the Matter? Mr. *Comptroller* knew 6000 l. had been offered by another, and might rather prefer this to be more than left.

And had Mr. *Eld* not been himself examined (which at that Time it was not expected he would be), and Mr. *Comptroller* proved, that Mr. *Eld* had told him he would give 3000 l. for the Place, that a year or two before that he had told him, that Mr. *Eld* offered to give him a Ballot, which he was to give him to have Money in it, that he was to give him 1000 l. and that Mr. *Eld* was that Day, or very soon after, admitted. According to the Custom of confirming any Bidder, this would have been full Evidence, and Proof, that there was 6000 l. in the Ballot, returned; it being impossible for the smallest Top of the Earl of *Macclesfield*, but by the Impunity of *Midd*, his confidential Witness in Matters of State, not to tell the greater Secret.

VIII. The 8th Article concerns the Case of Mr. *Thynne*.

There, upon Mr. *Barnard*'s Death, 6000 l. was offered me by another worthy Gentleman, but Mr. *Thynne* was admitted.

He was given, upon a Condition of 500 Guineas, but that all above 200 l. was returned.

My Lords, force what parallel relative to that matter is now capable of Proof, I will not trouble you with the Particulars of it, which might be mischievous.

Mr. *Thynne* is likewise a Person unexceptionable; Mr. *Baron Gifford*, now one of the Lords Commissioners for the Custody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his Favour.

But there is no Objection to him neither, and therefore there needs no Proof.

It is in the State of the Fact upon these two Articles. This is to be far from Enquiry, the main is what is voluntarily offered.

So far from *Enquiry*, the greater Sum is refused, and a less taken. And even the greatest Part of that returned, 3400 l. in the one Case, and 2250 l. in the other.

And the Persons each, that were I to go through *Thynne*'s *Hol*, I cannot suffer but to call out two better men.

Upon the whole, all that can be pretended to be in my Hands now, upon this is not to be concerning Mr. *Kyngham*, Mr. *Thynne*, Mr. *Thynne*, Mr. *Eld*, and Mr. *Thynne*, which are all the Managers have proceeded upon, relating to money received from the Mallers, but that 3850 l. this is, 1850 l. from Mr. *Eld*, and 2000 l. from Mr. *Thynne*; the rest having been all returned.

As to what was given back to Mr. *Thynne*; he has sworn, that he was not the least Times, in order to have Part of his money returned, and received it before the first Seal after *Thynne*, near a month before any Order by the Lords of the Council to call for the Accounts, and with every Thing was in the first State, when he said it, and from his having sworn it cannot be judged to be any Thing but the Truth of Gentlemen.

Mr. *Eld* was not returned till after the Accounts were begun to be taken, in consequence of long Time in the County; but when he came to Town he had it.

IX. The 9th Article relates to 200 Guineas given me by Mr. *Thynne*, upon his disposing of 1 l. Office of Clerk of the Cathedral of *Louvain* to Mr. *Hawley*.

The Evidence is quite contrary to the Charge, as it is told in the Articles, and amounts but to this, That *Barnard* having agreed to dispose of his Office to another, that not a Payment was made by 100 Guineas upon that Occasion, and though I, at that Time, knew that more had been given in the like Case, I was contented with that, and accepted it.

This is within the first Seven of the Case of the Mallers, it has been granted by my Lordships as a Right of their Office, upon Dispositions of the Office, and none of the last Nature.

Before the Proof of what had been paid to the Great Seal, upon another Disposition of this Office, it has been proved, that another of my Predecessors, the late Lord *Ginger*, declared his Opinion, that he thought it his Right to have a Preference; And he having then paid a Grace of this very Office, without having had a Preference, upon the Party's having protested, and affirmed him that it had been usual to give any for that Office, he expressed great Discontent, and declared that that Office should not pay as well as others of the like Nature. Why should both the said of my Predecessors, or I, or any upon Transfers of such Offices, and his own, a Right to receive them.

As to the Discontent Mr. *Barnard* pretends to have had with Mr. *Comptroller*, Mr. *Comptroller* denies it, and in any other produced by the Managers to this Point, this is a Charging between a man and a Minister, and that cannot be said to be proved by them, which is affirmed by one of six Ministers, and positively denied by the other.

And if there had been any such Discontent, it is not brought home to affect me; for there is no Pretence that I knew any Thing of it.

But as to the whole Fact wherein they differ, I think, from the Character that has been given of Mr. *Comptroller*, and what has appeared of Mr. *Barnard*, it would be no Question at all which of them you should be believed.

VIII. VI.

X. As to the 10th Article, there is no Evidence given.

XI. The next Article is the 11th. And the Substance of it is, That in order to discharge and manage the legal and onerous Gains arising to myself from the Sale and Expedit of the Office of the Masters of the Court of Chancery, in Violation of the Trust reposed in me for the Care and Præstition of the Suits, I did admit several Persons in the said Office of Masters, who at the Time of their Admission were of small Substance and Ability, very unfit to be intrusted with the great Sums of Money and other Effects of the Suits lodged in their Hands.

The Mallers are not by this Article charged with the Want of any other Qualification whatsoever, but that of Estate: nor is there the least Proof at Pretence, that they were not in all other respects men of Ability equal to the Duty to be discharged by them, honest and unexceptionable in Point of Reputation; but the single Objection to them is, that they were Persons of small Substance.

The Proof offered upon this Article is this;

They have produced three Orders made in the Court of Chancery in the months of January and February last, whereby it appeared that Mr. *Canby*, Mr. *Kyngham*, and Mr. *Thynne*, had not at that Time brought in all the money that appeared to be then in their Hands belonging to the Suits of the Court. This is their whole Proof.

But I am entirely at a Loss to know how this can be stretched in proof, when I believe they were of at the Time of their respective Admissions, we ordered that they are not of Ability now to pay their whole Balances, merely because on 1st a particular Day they had not paid their respective Balances into Court.

But I shall not trouble your Lordships with this Proof, that I had any Reason to suspect their Ability when I admitted them.

Mr. *Canby* had an Estate of between 5 and 6 hundred Pounds per Annum. Mr. *Kyngham* was preferred to me as a man of Substance; Now that he comes under another Article, to focus in down, he owns that he has an Estate of 4 or 5 hundred Pounds a Year, with Timber upon it worth 2500 l. and had likewise at that Time in money in the Funds, to the Value of two or three thousand Pounds.

The *Barnard* was esteemed a man of a very good Estate and Substance. He is the Person to swear himself now worth nothing. And, to do it credulously, he flatters not at owning, that he has mortgaged Part of his Estate for more than it is worth. Yet there is upon your Lordships Table the Particulars given in by him to the Court of Chancery, wherein his Estate, besides that which he says he purchased since he was Master, appears to be about 500 l. per Annum, and he owns he had, when he was admitted, a Place for Life of 250 l. per Annum, which he after disposed of. He says he was worth 20,000 l. and had been sufficient till, but for the Loss in 1720, which he owns were not known to me, nor generally suspected.

But, my Lords, these two Gentlemen are making their Circumstances now, in order to get back the money they paid for their Offices; which they could not pay by their own Oaths, directly for their own Uses; And therefore they have thought fit to keep back to much of the money of the Suits, which was called upon to bring it in, that the Suits may complain to the Court of Chancery, and then their Oaths may be made use of, for the Suits to found a Demand upon against their Predecessors.

And it is pretty remarkable, that these Deficiencies are neither more nor less than the Sums they at first paid to their Predecessors, and to me, upon their being admitted to their respective Offices. In this, therefore, I apprehend your Lordships will think their Oaths are of very little Value. It is hardly to be imagined, that they should have been so long in their Offices, and have paid back nothing, nor wasted; and that they are not a little farthing richer or poorer.

But whenever your Lordships Opinions, with respect to that, may be, I own I cannot but think, that there is something very extraordinary in the Attempt; that these two men have agreed with two Mallers (who were in Possession of two good Offices for Life, to give out of them 6000 l. the other 7500 l. for their Places, and now, that they are got into Possession, would have the money back, and continue in the Places 2000. That is, in short, they are tricking those Mallers out of their Places, under Pretence of buying them.

What manner their Behaviour or their Estates may now be, they appear not to me Persons of Reputation and Fortune, when they were admitted. And I do not observe, that the Article hath so much as suggested that I knew any Thing to the contrary.

One of the Managers would that I should let in Persons of no Fortune, and he solves it only by this, that they would give better Prices.

That had been something, if the Price had been given to me, but leaves it incredible, that I should let in any, that I had the least Suspicion had no Fortune: For the old Mallers to receive 6000 l. and 7500 l. at the first time that they represent me doing upon the View of buying the Places, and having the whole Price applied.

When I was to have the whole Price, and the Testimony was greater, there is no Pretence I took either of so many. And as it possibly might that I would do it, where the Mallers were to have the Price, and I so small a Proportion?

Great Sums have been laid on comparing the Sums in the Mallers Hands, with their Estates; in order to show their Unfitness to be trusted with their burs.

How that Proposition is to be justified, I own I am a little at a Loss. Here is a Matter that has an Office that brings in a considerable Profit, and is worth 6000 l. which cannot be run away with: He has a handsome estate of 4 or 5 hundred Pounds a Year, and a good Reputation. How much money may he be properly trusted with? I do not mean as a Banker, who may be presumed in some Ways, of one Sort or other, because he becomes, but as a Cashier for the Suits? There are very few Bankers that have such a Fortune to set up with. And I do not for that any of these Bankers, that is a man of good Reputation, and good Credit (who perhaps he has not a good Fortune of his own) is thought the worst of by those who deal with him, because he is trusted with very great Sums, far more than he is worth. The more he is intrusted with, the more are his Gains, and the sifter all think themselves that have Money in his Hands.

There is in the Close of this Article another Charge, that I did probably as upon Court, falsify reposit the Masters selected by me, as Persons of great Fortune, and in every respect qualified for the Trust reposed in them, in the present Cases and Issues of the Suits.

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My



My Lords, as to *that* I think nothing can more plainly flow, than this Article, and what has been said upon it, the forced Confessions put upon me I do.

Mr. Waller proves, that in Feb. 1723, I declared in Court, that the *Malsters were Persons of good Fortune and Abundance as any Set of Malsters had ever been before them*. Which is spoke of the whole Body of Malsters, and not of those only who were admitted by me. He says he was *astonished* at it. But he has given no Reason why. If he knew any thing, that any of them were not such as I described them, a little Candour would have made him believe, that I was not rightly apprized of their Characters; and a little Concern for the Honour of the Court, wherein he was a Practitioner, would have made him do me right.

But, my Lords, is there any Reason assigned, why I should think otherwise than I spoke?

Mr. Lyttelton is extremely, to prove, that he told me, some of them were *superficial*; but he does not say any fact there. All he says is, that he took notice to me of Mr. Denon's misfortune, and told me, he knew not how soon the like misfortune might happen to others; which might be, (though they were all sufficient) of the Persons, with whom they should deposit Effects, upon going into the Country, should fail.

But his Expression is a little remarkable; that he cannot say he told me any of the Malsters particularly were *superficial*. *For he did not know how far he ought to be able to do so*. An Answer! what for one Malster informing the Chancellor of the Circumstances of other Malsters, in order to have proper Care taken! Could he fear it! Who was to be the Witness? What must be the ground of the Action, if he told nothing but what was true?

But I think, he told he had not any particular Grounds for his Suspicion; and he says, I was unwilling to believe it of any of them. Why? because (as he says I told him) I had had very good Characters of them, and therefore I hoped they were all good Men.

It was not very kind, in that Gentlemen, to call it an *Unwillingness* to believe, there was Ground to suspect them; when I assigned some Reason, why I should not suspect them; and he gave me none, why I should.

So that here appears not any Reason, why I should believe otherwise than what Mr. Waller heard me say.

But to what end should I say it, if I did not believe it? Or how were the Suitors injured, or deceived by my saying so? Mr. Waller was not deceived. Who any body else deceived? Or could any one be injured? But they have discovered a reason, why I said it. They say that Mr. Folson was just dead, and there was a Malster's Place then vacant: And that said they have proved. But can any thing be more strained, than their Inference from it! Did I design, by saying their Malsters were men of Fortune and Ability, to raise the Price of that Vacancy; or to tempt Beggars to come in, that cared not what Price they gave? Does not what was then done clear me of all Suspicion of that kind? Mr. Edle was the Person then admitted, a Gentleman of very good Estate, of very good Character in *Windsor-Hall*, and 7500 l. more offered by another, that was no Beggar neither, refused. And after that, Mr. Threlton was admitted, preferably to one that offered 60000 l. Is it possible, that I should give better Proof that I had not that exorbitant View in it, that is suggested?

It was observed by one of the Gentlemen that, open'd the Evidence, that this was upon a *remarkable Occasion*, when the Master of the Rolls had made an Order upon one of the Malsters, to make a Suitor some Compensation out of his own Money in the Malster's hands, and I set it aside. And Mr. Waller began to tell something of the merits of the Case. But a very learned and a very judicious Gentleman, one of the Managers, was pleased to say, They did not dispute the Justice of my Order: nor is there any Charge of great Injustice in the Articles.

XII. The next Article is the 17th, which sets forth,

That whilst the said Thomas Earl of Macclesfield executed the Office of Lord Chancellor, an unjust and fraudulent method was used in the Court of Chancery upon the Sale of Offices of Malsters of the said Court, and upon the Admission of new Malsters, that the Prices or Sums of Money agreed to be paid for the Purchase of the said Offices, and for the Admission therein, were falsified and paid out of the Money and

Effects of the Suitors of the Court deposited in the Hands of the respective Malsters, forwarding their Offices, or doing, either by way of purchase of the Purchase in the Hands of the Malster resigning, or of replacing the Money disbursed for such Purchase or Admission by the forwarding Malster, out of the Money and Effects of the Suitors coming into his hands; by which Practice the Price and Value given upon the Sale of the said Offices, and Admissions therein, during the Time aforesaid, were greatly advanced, and several Persons of small Ability and Substance were encouraged to contract for the said Offices, upon a prospect of the easy method of paying for the Purchase of the same, and by means whereof great Defractions have incurred in the Offices of

several Malsters of the said Court, admitted by the said Thomas Earl of Macclesfield, which they have not been able to answer and make good; and although the said Practice was notorious and publick, and the said Earl was well inform'd thereof, and fully acquainted therewith, yet the said Thomas Earl of Macclesfield, in order to increase his own unjust and corrupt Profit in the selling the said Offices and the Admissions therein (which in consequence of this evil Practice) was raised and received by him out of the Effects of the Suitors, for whom he was intrusted) did not at any time, whilst he continued in his Office of Lord Chancellor, use or take any Measures

to reform the said Abuse, or to prevent the same; either by causing proper Schedules to be taken of the Money and Effects of the Suitors delivered over and transferred, or by appointing any Person in his behalf, to inspect or supervise the Transfers or Deliveries thereof, or in any other manner. But on the contrary, the said Thomas Earl of Macclesfield, unjustly, corruptly, and contrary to the Duty of his said Office of Lord Chancellor (to whom the Superintendency of the said Malsters and of their Accounts did appertain) did suffer the said fraudulent Practice to proceed and be carried without any Control or Check, whereby great Embarrassments have been made of the Suitors Money and Effects, to their great Loss, in the Offices of several of the Malsters of the said Court, who have not been able to answer and pay their respective Balances owing upon their Accounts, in breach of the Trust

reposed in him for the preservation of the Estates and Effects of the said Suitors; to the disservice and discredit of the said Court, and to the great Injury and detraction of the said Suitors in a Court of Equity, and in breach of their Relief and Protection."

My Lords, In support of this Article, two of the Malsters, Mr. Amory and Mr. Tre. Bennet, have sworn, that their Predecessors kept the price of the Places out of the Suitors money, which was to be delivered over to them, and that they gave the greater Price for their Places, because they found this an easy way of purchasing them. Indeed I must confess, that according to the manner of proceeding of these two Gentlemen, it will come out to be an exceeding easy way, which they have discovered: since, if they can prevail as their present Attempt, there will have paid no price at all for them; they are to have their money back again, and not to be in the least impoverished by the transaction. But in these my proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the least, but as I observed upon the Oath of Mr. Thomas Bennet, who swears, that in Conversation with me about a Treaty between him and Mr. Hamble, I took notice of an Article in his Account, delivered in to the Lords of the Council, wherein he mentions a good deal of his Cash to be in the hands of Persons of Ability, meaning, as he after explained it, in the hands of Mr. Hinde's his Predecessor and myself, and said, I was sorry for it, because it was discovering the method of paying for their Places out of Court money, which I had taken care continually to deny.

This (surprising my meaning to be what he would have) is surprising. He says, that at the beginning of this discourse I was so cautious, that I would not speak to him about returning the money I had had, because probably he might be examined about that Conversation in another place. And yet he pretends that in the same Conversation I told him this. So does he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he says, I expected he might probably be examined about his Conversation with me?

But I believe your Lordships will not give him the least credit, in this or any thing else that affects me. I beg leave to remind your Lordships that I asked him whether he did not then tell me, that if Mr. Hinde would give him 2000 l. he would pay the rest of the money (which was to show that he was worth at the least all but that 2000 l.). He denied it. My Lords, I then told your Lordships I could not forgive him in that, for I cannot be a Witness to myself. Therefore I asked him to another thing, wherein, if he did not tell the Truth, I might be able to satisfy him; I asked him, if he had not said so to somebody else? He positively said, No. He said there was such a report, but he denied the thing. At last he did own that he had said, that if Mr. Hinde would repay 2000 l. he would find it, or run the hazard, but never said any body he would pay the rest, he was not able. But Mr. Hinde swears, that Mr. Tre. Bennet sent a message by him to Mr. Hinde, that if Mr. Hinde would repay 2000 l. he would discharge the Article in the Account, and take care to pay the rest, and he believed that Mr. Bennet was able to pay it, or he would not have carried the message. And another Gentleman swears, that he had he would make it up, and a third, that he could or would pay it. So that he has contradicted in this particular, which I apprehend is material, by three Witnesses.

As to the method of Payment mentioned in the Article, it is stated to be, that the Price of the Office was *falsely* not of the Effects of the Suitors, either by way of the Return of the Purchase Money in the hands of the Malster forwarding, or of replacing the money advanced for such Purchase by the forwarding Malster, out of the Money and Effects of the Suitors coming into his hands; and the Method suggested for preventing this, was, causing proper Schedules to be taken of the Money and Effects delivered over, or appointing Persons to inspect or supervise the Deliveries, but I need not think myself, we any others.

My Lords, the method of paying by Return could only be used by *barterers*. And why should I there allow to raise the Price? Why shall we get a higher Price for one, whom I was to have no more to do with, only to have a piece of coin come in, that might bring Disgrace upon the Court and upon me?

As for the other method, the replacing the money paid, that is, as I understand it, borrowing the money to make payment, and then when the Effects are transferred, discharging the Debt out of them: How was that to be hindered? Not by Schedules, and fixing the Effects delivered over. The Delivery of the Effects is necessary to put that method in practice, and is far from hindering it.

But is this delivery over of the Effects so very material? Mr. Waller did not deliver over the Effects to Mr. Bennet for some time: Had they been still in his hands, had it been the worse for the Suitors? Whatever a Malster does not deliver over, he continues responsible for, and the Suitors have the same Security for them, as they had before. *Hinde and Ke, or* did not deliver over the Effects, but kept them for Payment; the consequence is, that they are compelled to bring them in. Had Schedules been made, and the Effects delivered over, and so *Kynsley* and *Bennet* been forced to pursue the other method, the Suitors had not had either *Hinde* or *Ke* or *Bennet* at Stake.

Indeed I never apprehended it necessary for me to see the Orders for Transfers obeyed, any more than any other Orders of the Court. It is the Interest of the new Malster to sell for the Effects, and of the old out to have a regular Discharge, which I do not see how he can have, without an Inventory of the Particulars, and a Receipt upon it, which at what I understand to be a Schedule, tho' it be never filed, tho' I apprehend the word Schedule is taken in a different Sense in the Report to the Council. And this I did believe the Interest of the Parties had made them do.

Not but it yet remains, that it is my duty to see to look after these Transfers. By what Law, by what established Practice, where does it appear, that a Chancellor is bound to see such Schedules made, and the Effects transferred? If it be his Duty, without doubt there is some method, by which it may appear he has discharged it, in cases where he has done so. But is there ever any Entry made of it? Are the Schedules filed with any Attestation, that the Effects were actually delivered over in presence of Persons appointed by the Lord Chancellor? The Effects in Mr. Hinde's Case were delivered over, I think, the day of his admission, in Mr. Lamb's is about a Week, in Mr. Bennet's in a short time; whether in presence of Inspectors,



appointed for that purpose, or one, has not appeared. Yet, my Lords, the Question is not now, Whether it be wiser and better to have Schedules prepared and filed, and for a Lord Chancellor to give Orders to file it. But whether it be his Duty so that it is a Crime not to file it? If the Statute desire to have Schedules filed, in order to be the better able to know how much the new Master is charged with, it is their Part to search and make Application; and upon such Application, it is the Chancellor's Part to make proper Orders, which they again are to take Care to obey, up to error, to prosecute, and for execution. And as to my Defence, and limitation, to increase my own unjust Gain; which it is given by the Statute of 1713, and make it criminal; and the consequence, that I, who take no Advantage of a higher Price, when I may have it, should, in order to take the Price, refuse to check a Practice which the Master is supposed to make use of, to the Prejudice of the Suitors, and only for their own Gain?

XIII, XIV, XV, XVI, XVII.

The 13, 14, 15, 16, and 17th Articles all relate to *Dormer's* Affairs; and contain several supposed Stratagems to conceal his Deficiency: all ordered upon the first View, and to prevent the Gain upon Sale of Office from being hindered. Without that View to gain, I do not for any Part of these Articles, that is criminal. And therefore, if, as your Lordships Judgment, I shall stand accused of that, upon a re-examination how my Heart stood affected in that Particular, I think all must fall to the Ground.

XIII. As to the 13th Article particularly: It sets forth *That from an Appearance of a great Discovery of Dormer's Deficiency might infer the great Gain I proposed to make by filing and wiping the Office of Master, I rejected and directed order to secure his Privy or Estate, or to make a proper Inquiry into the Deficiency; but endeavored by many indirect Practices to conceal for in the Statute the Vice State and Condition of his Office, and with respect to his Office, as to his Debt to the Statute. And the latter Part of the Article says, "That when Advice was made in the Court of Chancery (upon 17th Article) was intended to be the Effects of some of the Statute transferred to another Master for their favouring him, to detain the Statute into a belief that the Master was just, and thereby prevent a public Inquiry, then said, That the Statute need not be in haste, that Dormer was not gone to take the Air in the Country, that he would return in a little Time, and all would be well."*

As to this latter Part, they have not so much as examined a Witness to prove it: So that what Evidence has been offered upon this Article, amounts as much to no more, than a Proof of *Dormer's* being deficient. But as my Endeavour of more to conceal the State of that Affair, or any refusal or neglect to do my Duty, there is no Proof.

It appears, that he was off in November 1720, that his Clerk and his Servants, by his Order, gave out, that he was only gone into the Country for a while. But he was gone into Holland for rest of a Year. I knew nothing of it till after Christmas, and then all the Steps were taken that were thought most likely to get as much as possible for the Statute. His Chambers were searched by some of the Masters, and Durenden were given to stop the transferring his Effects in the public Places. And it was carried as far, that he was stripped of all, and with Tears begged, that Assistance should be made to me, for some Allowance out of his Office Subsidance, which Mr. Cullingham refused, because the Estate fell short, and he knew I could not order him the Money of other People. And it is not now pretended, that any Thing was not discovered by him, but only a Parcel of Hops; and that plainly was not concealed fraudulently; for he made no Advantage of it; the Hops are unpaid to this Day.

But the Charge of concealing *Dormer's* Affairs being the Foundation of many Articles, give us Leave here to say something of it, tho' they have made no Proofs of it, or of the other Facts in this Article.

My Lords, He going away in November, and never appearing more in Court, or in his Office, but another put into his Place in May; it is impossible his Selling was at that time, let us suppose. He was gone to the Statute, in his Hands, know that he was gone. For when I never imagined it was a Secret. And as to that, and their Agents, could not but know what was doing; had they not been furnished that the Court was taking the best Measures to make up the Deficiency, would they not have made Application for some Relief? I did believe the Masters would make it good. My Conscience swears he told me before them: He indeed does not now rightly remember the Time, and answered not at first very readily whether it was before, or after November 1721, when the second letter about the Account was wrote. But, of necessity, it must be before, because Mr. Edwards says, Mr. Cullingham told him it would be made up, just about the Time of his being made Master, which was in May 1721, and it is not pretended, there ever was any Thought, that it should be made up any other Way, but by the Masters. Mr. Edwards says too, some of the Masters told him it would be made up; he does not remember by whom they told it should be made up; but I think he says, he thought, I believe the Thing speaks, it could be by Nobody else but the Masters. And even Mr. Lightbown's Letter in 1722, takes notice of it as a Thing always under Deliberation, how the Masters should make it up; and that he differed from the rest only in the Manner; and adding that at the same Time care should be taken, that the like Accident might not happen again, and they be exposed to another Contribution. If I was not too credulous in believing this, let us come to the next Article, and see what your Lordships will be of Opinion, that the Statute before us, for some, whose Money lay at that time might continue for some Years, would have applied to have an Account taken, and their Proportion should be received. But nothing of that Kind was done by them. Afterwards there breaks out a Dispute between the Masters, and the Master of the Rolls; thereupon Mr. Lightbown informs your Lordships, that many Orders were made in presence of the Masters in other Branches of their Office; the Language of the Court varied (as he expresses it) in orders, and the Money put into another Channel; whereby they lost, not only any Advantage that might be made of the Money, but many Fossils and Perquisites that arose thereupon, and in the other Branches of their Office. Had not that happened, or should it be cured, I am persuaded that *Dormer's* Deficiency would all be made good. Contrary measures may prevent it.

There was some little Reflections made upon this Part of the Evidence,

which related to the Messings I first sent to the Bank; and after that of the Order, which was afterwards sent, and a Copy of it took, who never corresponded with the Register.

But your Lordships have had an Account of the Effect of my Messings to the Bank (tho' there was no formal Order made); was, that a Misdemeanor was entered in their Books, that no Transfer should be made without Leave from the Court of Directors, or Court of Chancery, which had the defined Effect. But it is true I sent no formal Order, because I did not apprehend, that I had Authority to hinder them from permitting him to transfer, by an Order of Court to be entered in a Cause, wherein they were as Parties. And (tho' that was first said) was only to deliver them from the Register's Power, it seems, looked upon themselves to be under, by that Messing, and to answer the Entry to their Office.

And as it is not being considered, I send likewise observe, that even the Director's, not in November last to the Masters by advice of the Committee of Council, for preparing and bringing in their Accounts, were never entered: And yet the Gentlemen will not imagine, that that could be with a Design to have it kept a Secret, but the true and only Reason of it was, that their Forms are not necessary, but is advisory Suits, or unless there be Question to enforce the Execution of such Orders by the Process of the Court.

But they charge and argue, altho' they have proved nothing, that I have neglected my Duty.

My Lords, it is proved that I did a great deal more than they have proved to be my Duty. And when did I omit?

Obj. I did not (they say) secure his Person.

Rep. My Lords, was that a Crime? He was in Holland out of my reach. When he came into England, it was to deliver up all he had to the Statute, and on promise of Liberty.

But if I had, would that have been of use to the Statute?

Obj. I should not Sequestrate to seize his Estate.

Rep. The Estate was got without one, with a much better. The most usual Allowance upon a Sequestration is to let a Day to every one of the Sequestrators that are employed to put it in execution, which would have cut up great Part of the Estate. And I do not know that the Sequestrators would have found out the poor Parcel of Hops, which is all that was not got then; and it was not incalculable, but has been brought in now without the help of a Sequestration.

Obj. I did not examine him upon Impeachment.

Rep. I order'd Cullingham to propose to the Masters, whether they would have one; and they thought he would make a fair Discovery without, and were afraid lest that Appearance of Difficult and Harshness might drive him away again, but if they should find it requires, they would apply. No Application was ever made to me to have it, nor does there any fraudulent Concealment appear, nor any Thing directed from the Satisfaction of the Statute. And if he made a fair and honest Discovery of all, what imports it, whether he were factors, or not sworn to?

But I would beg Leave to say, Why should I neglect what was proper?

The Reason they assign is, that if I had done right Things, it would have been a *Nuisance* and brought the Matter on.

My Lords, what could make a greater *Nuisance*, than that a Master in Chancery absconded, and no Money was received or paid, nor Balance due in his Office from November to May, and then another put in his Place?

One of the Gentlemen expresses his Affirmation, how it could enter into my Heart, that this could always be concealed, or that to chuzzle a Wound could ever heal of itself, without the Application of proper Remedies.

My Lords, it is yet more astonishing that it should enter into my Heart to endeavour to conceal it, for those Reasons which he supposes I had in view. And I should have thought the Arguments that raised his Wonder at my having done so, being Arguments that I never did it; and indeed it is impossible I should endeavour or hope to conceal that, which I knew was so notorious and publicly known. Nor was I without Endeavours towards healing the Wound: Some of those Endeavours are attempted now to be made Part of my Crime.

XIV. The 14th Article suggests, "That the said *Edward Dormer* having towards Satisfaction of the Summs of the said Court, assigned to Henry Edwards, Esq. (who succeeded him in his Office of Master of the said Court of Chancery) a Debt of 22000 l. 4 s. or some other great Sum due from William Wiffie, a Banker, to the said *Edward Dormer*, to the Intent that the Money received on the Account thereof, should be applied and disposed of as the said Court of Chancery should order and direct, the said Thomas Earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, for the unlawful Purposes aforesaid, without Respect to the Interest of the Statute, by Colour of his Office, did, in an unreasonable, clandestine, and criminal Manner, authorize, direct, and establish, a pecuniary and trading Complicity with the said William Wiffie, upon the Terms of the said William Wiffie's paying the Sum of 22000 l. 4 s. and assigning 100000 Part of a Debt of 220000 l. 12 s. 6 d. pretended to be due to the said William Wiffie from *Edward Dormer*, or so that Effect, in discharge of the said Debt: And to that End, upon the Report of John Edwards, Esq. then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Statute, did, by a private Order not made in open Court, order the said Henry Edwards to accept of the said Complicity, in full Discharge of the said Debt, which said *Edward Dormer* was a Person infamous, and has since absconded for Debt, and now, or a very small Part of the said 100000 l. has been, or is very likely to be received."

This Article your Lordships observe relates chiefly to the Composition with *Wiffie*, which is charged to be authorized by me to the unlawful Purposes aforesaid, that is, to conceal *Dormer's* Deficiency, and keep up the Profit of the Office.

Suppose that Transaction had been publick, my supposes *Wiffie* had been openly paid for this Debt, would that have fallen the Price of Office, or disclosed *Dormer's* Deficiency? If his absconding and assigning his Place to Mr. Edwards, did not discover it, would the Profit of his assigning this Debt to Mr. Edwards have discovered it? What End then could the Privacy of this Transaction serve?

But



But tho' it does not answer the Purpose, that is charged; yet it is insisted upon to be prejudicial to the Suitors, and giving up a great part of the Money due to them from *Wife's*, and due in a clandestine manner, and without their Knowledge.

What Proof then is there, that this Compulsion was prejudicial to the Suitors? A small one it is indeed, but for a desperate Debit, and what Proof is there that they could have had a better, or that it would have been better to have had none?

It is said, that *Wife's* paid to some of his Creditors their whole Debts.

It is true that was said, but it has not been proved. If it had been proved, and the Circumstances thereof, probably it would have appeared, that he had a particular View in paying those whole Debts, and it might be more beneficial to him to do so, and keep them his Friends; than if he had paid them only a part, as he did to his other Creditors.

And as small as the Sum is, my Lords, give me leave to say, it had never been put in for the Benefit of the Suitors, if this Compulsion had not been made. So that *Wife's* has been got for the Creditors, tho' so much should be recovered from *Wife's*, that the Creditors already got from him; where nothing had else been had, for what appears.

Obj. But *Wife's* was insufficient, and the Debt alleged from him worth nothing.

Resp. As to *Wife's* Circumstances at that time: Some Persons have been called, who have proved, that he was insufficient at that time, and could not pay more than three or four thousand Pounds; but the same Witnesses give an Account, that his Circumstances were then known to be four or five Pounds of his *Affidavit*, and that by all other People, who had any Knowledge of him at that time, he was looked upon to be very sufficient; he had left off his Business upon having raised an Estate; he was of good Reputation; he lived at *Hawley* in a House making a good Appearance, with good Furniture, and a great Quantity of Plate, till the last, till the Time of his being put in Prison, which was not till last Year, that he surrendered himself in discharge of his Debt.

But suppose he was not sufficient, how does that affect me? I was not obliged to concern myself with it, and left the Compulsion to the Management of the Masters; they made it. *Wife's* had sworn an Affidavit as Writing, of his Circumstances, and that this was as much as he could pay to the Suitors: Mr. *Hutchins*, a Gentleman of very good Reputation, was the Master, he being then Master of the Court, to whom I referred the Consideration of it, according to the Course of the Court; he was upon his Oath in what he acted thereon, and made his Report, that he was of Opinion this Compulsion would be for the Advantage of those to whom the Money was to be paid. And upon that I grounded the Order.

Obj. But the Suitors had no Notice to dispute it.

Resp. The Consequence of this is only, that Mr. *Edwards* being their Trustee, and *Wife's* knowing it, whatever could be done between them would not bind the Suitors, if it were any way detrimental to them: Therefore they have the Benefit of all that has been put in upon it, and yet have still a right to enquire into the true Circumstances of Mr. *Wife's*, and to rectify it, in proportion with his other Creditors, any Effects he shall appear to have unimpaired.

Upon the whole of this Matter, could the Master, or I, have any interest and to strive, by allowing *Wife's* to compound at an under rate? It is not pretended I knew him, or could intend him a Favour. Why then should I deliberately lessen *Dumore's* Fund, which was before deficient, and which I was endeavouring to make up?

Obj. But it is said, that this was by my Direction.

Resp. Suppose it were; they have not proved any thing to induce a Supposition that it was not perfectly innocent, any beneficial to his Suitors, or probable to be so.

But the Proof is only, that Mr. *Edwards* spoke to me about it, and asked me, if he might recommend it of himself. I thought not. But Mr. *Edwards* having afterwards informed him that it was usual to do things of that kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he proposed that Method, and I thought it might be so done. And so it did it.

But whether this was prudent or imprudent; where is the Crime? This tended nothing to conceal *Dumore's* Affairs; he was known to be broke, and *Wife's* Debt was extremely desperate. There was no other View, nor could be, but to get somewhat towards *Dumore's* Deficiency, and nobody is at all hurt by it.

Obj. But this was unlawful.

Resp. In what?

Obj. No day was appointed to hear Counsel upon it.

Resp. My Lords, there was no occasion for Counsel; there was nothing for Counsel to be heard to; there was nothing for them to argue. The Order is in direct pursuance of the Report.

Indeed, upon carefully reading the Article, one would imagine the Charge to be, that this was an Order made upon Mr. *Edwards*, without giving him Notice, or hearing Counsel for him. And that would be very unusual and unjust; if it were not that it is ordered upon his own Petition, and at his own Request.

Your Lordships will likewise observe, that this was the 30 of August, after the Statute were over; and if I have appointed it to come on upon a publick day (not to have it concealed) it must have wanted till October; and by that time *Wife's* and his Effects, might probably have been gone, and the Opportunity of getting any thing lost.

As to some few new Observations made upon reading these Proceedings, I see not how they tend to prove any Crime in me.

Obj. They are not filed.

Resp. That is not my Affair. And if they are never filed, they will affect nobody, and cannot possibly do harm.

Obj. Some Lines or Words appeared said out, which import that Mr. *Edwards* should be admonished.

Resp. If he acted fairly in this Matter, he would be admonished, tho' while Words were out; and if he did not, they ought not to be in.

In short, here is not the least Evidence, that 1907 this Compulsion was made with a View to get as much as could be for the Suitors, out of a desperate Debt; there is nobody hurt by it; and if it be not of advantage to the Suitors, they may avoid it.

XV. XVI. The 15, 16, and 17th Articles were opened together. But one Gentleman spoke more particularly to the 17th, as being of different nature from the others, and therefore I will speak to it separately.

The principal Subjects of the 15th and 16th Articles are 4500<sup>l</sup> raised by the Masters, and 2100<sup>l</sup> by myself, towards *Dumore's* Deficiency.

In the last Article I spoke to, the Crime was, the lessening *Dumore's* Effects by a trifling Compulsion; in this, increasing them 5500<sup>l</sup> in a Crime.

At first sight, one would think this commendable; but, by I know not what Faculty, every thing grows criminal by my having any concern in it. My Intention indeed all. It is said that I intended by it to carry an advantage to myself, that is, as one of the Gentlemen explained it, to conceal *Dumore's* Deficiency.

But all that appears upon the Proceeds offered relating to my Intention is, that there was a strong Desire to make good *Dumore's* Deficiency; and that way of concealing it is surely not blamable.

But then as to the 4500<sup>l</sup> it is said, that I induced the Masters to pay it by colour of my Authority.

How is this proved?

Mr. *Garvey* produces, and proves, the Receipt he had given him by Mr. *Edwards* for 500<sup>l</sup> voluntarily contributed by him towards *Dumore's* Deficiency; and says, that he had procured it in February, and paid it accordingly in April.

Mr. *Edwards* says, that in 1722 he received 500<sup>l</sup> a-piece from all the Masters, but Mr. *Lightbown*.

Mr. *Lightbown* says, that when Mr. *Cattell* spoke to him of it in February 1720, he told him, all the other Masters had agreed to it; but Mr. *Lightbown* refused it: That I never spoke to him of it till January 1722, which was near two Years after; that then I was far from making use of my Authority, that when he asked me, Whether it was my Proposal or the Master's; upon its being said, it came from the two junior Masters, he took occasion to speak more freely against it; and though I used free Arguments with him, yet he says I left him to his own consideration.

My Lords, these are their Proceeds. But they are to be kept out by force Contradictions.

Obj. It is said, that the Letter which I caused to be sent in February 1720, to require them to give in their Accounts, was in order to terrify them to come into a Compulsion: for it is said, when that had its effect, and the Money was paid, they were not obliged to bring in their Accounts.

Resp. This then, I suppose, is that Colour of Authority by which (according to the Charge in this Article) I induced them to contribute.

But in the first place, I beseech your Lordships to consider, whether it can be thought, that any of the Masters would pay 500<sup>l</sup> rather than let me know what was in his Hands; which was all the Consequence of my having an Account? If it cannot, why should it be, without the least Proof, imagined, that I should expect it?

In the second place, I must beg leave to observe, that the Masters both know, what effect that Letter had upon them, and what was the motive of their advancing that Money; but some of them have sworn, that they were in the least induced to pay the Money by the fear of that Letter, or by the Apprehension of being forced to give in their Accounts if they did not comply. Nor do the Circumstances shew it. For Mr. *Garvey* came in but in that February, and had but little Money in his Hands, and a very short Account to make. Mr. *Keyser* and Mr. *Thorn*, who are now deficient, were not then Masters. Mr. *Heiford* had got an Account ready, yet he paid. Mr. *Lightbown* gave in no Account, and yet he did not pay.

So that upon a View of the Evidence, here is a good Action done, very beneficial to the Suitors; and no indirect Practice to bring it about.

And therefore the Charge not being proved, I am, according to my general Pica, not guilty of the matters contained in this Article; and as a show, in manner and form as they are therein charged against me. And there is no occasion to make out what I have stated in my Answer, to have made the matter more clear, in case they had given occasion, by having produced Evidence to maintain their Charge.

However I have been a second Letter, written by my Order, in November following, requiring those Accounts with more earnestness. Mr. *Cattell* produces the Draught of it, and tho' he will not swear positively that he delivered or sent it, because he does not find any Memorandum of it; he verily believes he did, and has not the least ground to suspect the contrary.

Your Lordships will observe, how very particular the Account was demanded to be.

The first Letter was wrote the 24 of February, 1720. Your Lordships will give me leave to read the Copy kept of it.

[Reads.] 14 February, 1720.

"I am commanded by my Lord to signify to you, that you do, with all convenient speed, lay before his Lordship an Account in several Columns;

- "1. Of the Cause.
- "2. Solicitors, or Agent.
- "3. The Date of the Order.
- "4. For what Purpose the Money was brought in.
- "5. How much was brought in.
- "6. When.

"7. How







that if their Officers were established, as they had been for forty Years, they would have an annual Contribution towards *Durnor's* Deficiency. And he heard nobody say otherwise, only he himself (he says) did not agree so it.

So that it appears upon the whole, that what I said was not with Intent to supply a present Purpose, as is charged; for I had declared to them, I had taken Care of that, or would take care of it. And if I could, by setting such an Example, or by any Arguments I could use, induce them to contribute by Payments, as they could be spared out of the Profits of their Offices, to make good the whole Deficiency, or if not all, yet to make good the Proportion of them, who had had no part of *Durnor's* Effects, I live so harm, and I am sure there was no Fraud in it. It is to conceal it, and prevent Clamour or Inquiry about it, only by paying it, which would leave no Room or Occasion for Clamour or Inquiry; or if they could not pay the Whole, by paying the Proportion which any one could be intitled to.

And this Proposal, to have it paid by Annual Payments out of the several Offices, did not tend to ease the Pains of them, but on the contrary, by laying a Burden on them, would greatly diminish their Value.

Whether the Design I had, or the Arguments I used, were prudent, or discreet, or proper, I leave to your Lordships Judgment; but the Accusations were not aimed for the Purpose in the Article, but for the Benefit of the Suits of the Court.

But to give this loose appearance of a Crime, they are forced to attribute it to criminal Views and Designs, of which they have made no Proof, nor shown any Probability, or any Possibility, that they were the Principles of this Action.

I might farther observe, that the paying the good, and leaving the bad, (which in the very same Order is directed to be paid to the Plaintiff) unpaid, and the 57<sup>th</sup> demanded by Mr. *Lightham*, unpaid, would not at all hinder the Deficiency from breaking out.

As to the Exemption charged at the End of the Article, to be paid by me, I answer, I said one very near it, but with other Exemptions along with it (which the Writers in Error omit) that there, I could not possibly have any ill Design as it, nor could any Inconvenience ensue upon it. No Question had till that time been laid before the Court relating to *Durnor's* Deficiency. *Choby's* was only an Application for Favour, for a Sum then particularly wanted, because there was at that time no Effects, and was paid by me out of Compassion; there was no Question of Right about it to be decided, as was here, when the Dispute was, who was to bear the Loss, if any, and could be determined only upon Circumstances. At the same time was so far from recommending it as I believed, that there was no Deficiency in *Durnor's* Office, or that I knew not of it, that I declined a great deal, which I knew about that Matter.

As to what they object, that the Order is drawn up in such a manner as implies (as they say) my being wholly ignorant of the matter, by directing an Enquiry, whether there was likely to be any Deficiency or not:

Give me leave to say, that if I had known more of it; if I had known too far a Summing what *Durnor's* Deficiency would be; I could not as a Judge frame an Order upon my own private Knowledge, but must make it in the same manner as if I had known nothing at all; and accordingly that Order is worded in the same manner, as it must have been, if I had never heard of *Durnor's* Failure before.

Besides, it had been then talked, that *Wyllie* had not dealt fairly in his Compositions; and if so, and if he were worsted, the Suits might recover near 20,000. more against him. A matter extremely proper for the Masters to enquire into.

XVII. As to the 17th Article, which relates to Orders for Payment of Money deposited with *Durnor*, which Mr. *Edwards* (as is charged) was directed by me to pay, without regard to that Property, as he ought to have been observed in a defective Fund.

They have read four Orders made by me, and no more, three of them in one Cause; and only one of them directs the whole Money to be paid out. I said, in my Answer, that I did not know that I had made any other Order than that of *Clinty*, but believed the Court might have made others; which gave occasion, it seems, to some of the Gentlemen to wonder at the Dissimilitude between me and the Court. My meaning was, that such Orders might have been made by the Court in my absence, for aught appeared, that it, by the Master of the Rolls and Judges, with others in Commission for hearing of Causes.

But as to what was done by me, the proper Answer to this Article, the true one, and I hope a satisfactory one, is, that I acted so as I thought would be most for the Good and Benefit of the Suits. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was mistaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Negliges are charged upon me in this Article.

1. Not taking proper Care of the Securities lodged with the Masters.
2. Not taking Security for the Cash.
3. Not taking the Masters Accounts.

There is another thing expressed, which is permitting and encouraging the Masters to traffick with the Suits Money and Effects. But that I apprehend meant only, that the not taking due Care to hinder them, is permitting and encouraging them. So that it does not make a distinct Branch of the Article; but is only a supposed Consequence of the rest.

As to the Securities and Cash, what I am charged to have omitted doing, was never done before by my Predecessors, nor directed then to me by the Statute. And therefore, I suppose, there is a particular Reason assigned

why it should have been done by me, that not being so, I am charged with *Durnor's* Failure, which is a great and serious Charge; and I am charged with taking upon himself to do so, and employ the Money and Effects in the Suits in his Hands. And this the Article charges as I know.

My Lords, as to this particular Article: To add a new Duty to my Office from it, and to lay me under an Obligation so to do, which my Predecessors were not obliged to; it ought to be clearly made out, that the Facts are true, that this was the Cause of *Durnor's* Failure; that I knew it to be so; and that thereby it became my Duty and duty by the Statute, to make the new Provision express. But there is no Proof that *Durnor* did actually dispose of, or employ the Money and Effects in the Suits in his Hands; much less is it proved, that I ever knew it, or that the least reason to suspect it; but the contrary.

The Account Mr. *Parisher* I gave of what passed at the Time of *Durnor's* giving off, was this (which was repeated to me, and never thought to be false); That Mr. *Durnor*, who was his Uncle, informed him, he having happened to receive a greater Sum than ordinary out of the Exchequer, and going into the Country in the Long Vacation 1710, he was not where to leave it later than with Mr. *Wyllie*, an eminent Banker and he left it with him in the Value of 20,000<sup>l</sup>; then upon his return to Town, he found Mr. *Wyllie* had paid it, and that therefore he would withdraw himself, for fear of a Gale; that accordingly he went into London, and wrote a Letter from Rotterdam to Mr. *Parisher*, with one enclosed, to be shown to the Masters, and sent to me as Mr. *Callaghan* gave me Account of the Letter, that it set forth the Case to the Masters (as I felt above) and the Draught thereof as in the Hands of the Masters, which they might produce, if they thought proper. This I took to be the true state of the Case; and never heard any thing to the contrary (excepting Mr. *Lightham's* Charges, founded on no Fact, but on the greatness of the Sum, which this account for another way) till *Durnor* fell, when it was told that *Wyllie* pretend, he borrowed it of Mr. *Durnor* at an high Interest; but as that appears to be spoke in exculpation of himself, an Affair though at four Years distance a little to be regarded; and however, if it were true, ought not to affect me, to whom it was never disclosed. But according to this I have stated above, which was certainly the Truth of the Case, or however what appeared to me; *Durnor's* Failure was not occasioned by his undue disposing of or employing the Money and Effects; but it was a Misfortune every to the Year 1710, and Consequences peculiar to that Time; it was not likely to happen again. On Dr. *Eddelshy's* Failure there appeared no Accident, but his own ill Conduct. Yet no Change was made by the Lord Chancellor, as to the Effects, or Cash, or giving Security.

But it was urged, that tho' this had not been defined to me by the Statute, it was then proposed to me by the Masters themselves:

And three of the Masters were called to prove this. But only two of them pretend to have spoke to me about it, Mr. *Lightham* and Mr. *Kingsley*. Mr. *Hylford*, the 3d, says, He never was once with me about it, only he looked some things which Mr. *Lightham* told him he proposed.

Mr. *Lightham's* whole Evidence, taken all together, clearly proves what I set forth in my Answer; that I had in view three Things: 1. The making good *Durnor's* Deficiency. 2. Settling Masters in their just Rights. 3. Securing the Suits from future Accidents. The 1st was the Principal, and always uppermost with me. The 2d was plainly necessary, in order to that. The 3d, for securing the Suits from future Accidents of that kind, I was likewise very desirous of; but, I own, at that time, while I thought the Masters then on being Persons of Ability and Substance, and he gave me no reason to think otherwise, I apprehended there was no need of any extraordinary Expedition in it.

As to making good the Deficiency; It appears, that, at the Time of Mr. *Lightham's* Proposal, the Masters were all willing to contribute; only Mr. *Lightham* stood out, and his Reason, which in his Examination to the 16th Article he says, he upon one Occasion mentioned to me as sufficient, was, that it would be a Precedent for his paying other Debts of other Masters. And upon his Examination to this Article, he says, that he told me on Disputes on that subject, that as *Durnor's* Accident had happened, the like might again; and so often, that it could not be supposed; and afterwards, that if any thing could be done to make good *Durnor's* Deficiency, and put things upon a secure Bottom, he would be as ready to contribute as any body. He then gives an Account of the Proposal he made, which he says, I desired him to reduce into Writing for my Consideration, which he did; the Copy of it was produced and read, and I have the Letter itself here in my Hand; and here only, I apprehend, is to be found the Proposal which is to affect me, and not that which he now from his Memory mentions to be the Proposal, but differs from the Writing in several Things; which not being in the Letter, if he had mentioned them curiously in the Disputes, I must have looked upon them as what upon further Consideration he did not think proper.

My Lords, The occasion of my Proposal was my speaking to him about contributing to *Durnor's* Deficiency, and both that and the Proposal itself shew, that it was really no more, than laying before me the Terms upon which he would contribute.

In these Terms, the principal thing insisted upon by him was, that the Money should be continued to be brought before the Masters; which, I apprehend, had then been broken a little in upon: Which is expressed in these Words, shewing the Improbability, that a Fact objected should happen. "If [as an old Words] the Money be directed in usual to be brought before the Masters, both by your Lordship and the Master of the Rolls, without which the Masters could find themselves much troubled in the River of Mr. *Durnor's* Affairs."



The other thing he inflicted upon was, that he should be secure from being expelled to the like Inconvenience, by failure of another Master; and therefore what he proposes, in relation to securing the Effects, is not a thing proposed to be done of itself, separately, but in company with the other Regulations.

The next part that relates to the Rights of the Masters, was afterwards pressed further, as it was apprehended they were more broken in upon; and produced the Representation of the Masters, which Mr. Lightfoot the other day mentioned to your Lordships.

And this likewise explains several parts of his Evidence: It explains what he says, that he pressed on to obtain to do something, and thought that to be *inexpedient*, which was indeed my Opinion to proceed upon (see *Givens*), in doing a Thing, which, if not properly well founded, might have the Appearance of being continued on purpose to advance, or keep up the Profits of the Office of the Masters. It explains his Assertion, that if I did not do it, it would not be done by my Successor, which the Seal should come into the Hands of a noble Lord, when he came. It shows, that what he pressed, was not so much for the Masters to give Security, or to make up *Dumro's* Deficiency, and restore the Honour of the Court, as to have Orders made, for the Benefit of the Masters; which I thought ought to go together.

For I wanted no Relaxation in me, or in any other Chancellor, to make Orders upon the Masters, to secure the Effects of the Sutors in their Hands; but that been the Thing pressed, and especially if, as is pretended, the Masters denied it. But it might raise the Pretensions to support the Masters against the Claims of an honourable Person, with which they then had a Dispute.

This View of this matter will make your Lordships consider it in a different Light from what the Managers have endeavoured to set it in, and that my Speeches did not proceed from my concern for the keeping up of the Masters Offices, but from my Caution not to be too precipitate in advancing them.

And had I taken the measures desired, and made Orders to prevent the Master of the Rolls from meddling, in his Decrees, the money to be sought before the Officer, and from relieving Inhabitants to the fix Clerk; and to bind at that *Ex parte* the other matters in dispute (but I will do them the Justice to declare, that I do, to far as I have time of, think the Masters in the right thereof) yet I am apprehensive, that it will fight it would have been matter of Complaint against me, as a continuance to advance the Office of the masters; and that the Schemes proposed by Mr. Lightfoot for giving the Security he represents as sufficient, would not have been thought a Balance to it.

Having said this, give me leave to weigh the Proposals.

And first, his Proposal for providing for *Dumro's* Deficiency. The way of doing it, which he proposes, is this: Having found, in the first part of the Letter, what he takes to have been the occasion of *his* great Deficiency, he goes on, "which I hope may be provided for, by the Credit of the Court renewed and supported by every Master advancing account, or such other Sum as shall be agreed on, out of the Cash of the Court in his Hands; which being placed out at Interest, the yearly Income thereof, together with the Produce of Mr. *Dumro's* Office, will answer the Demands that may be expected on his Successor, and will in due Time make good the Debt upon the Office."

But as to this, I thought it both impossible and inefficient; and I told him, and he very lately owns it in his Evidence, that I could not make an Order of that kind, because it would indeed be ordering one man's money to be put out at Interest, to pay another's Debt. In this next Proposal, relating to the Securities, lodged in the hands of the Masters, which he thought of the greatest Consequence, because, as he now says, he told me that *Dumro's* Accident came by trafficking with Securities; which he inferred from a Supposition that there was not then so much Cash in his Hands. This Fact is contrary to the Representation made as above to me, and the Supposition, with respect to the Quantity of Cash, is obtained by his having just received a great Sum out of the Exchequer. And your Lordships have heard from the Report to the Lords of the Committee of Council, that the Masters have brought in all their Securities, so that what Mr. Lightfoot thought the greatest Danger, has proved to be none at all.

However, to prevent that, which he thought the greatest Danger, he proposes the taking all Government Securities for the Future, in the Names of two or more Masters; his Words are in Page the 24, "Having before observed from whence this great Deficiency arose, I submit it to your Lordship, Whether the taking all Government Securities for the Future, in the Name of two or more Masters, may not prevent the like misfortune hereafter." He says now, that he proposed this to be taken in the Names of four Masters, and of a third Person; so that is not mentioned in the Letter, nor does Mr. Lightfoot mention it in his Evidence.

As to this Proposal, he has now sworn, in the Truth is, that I found Difficulty upon that head, by observing that this would not answer all Cases, particularly with respect to the *Ex parte* and *South-Sea* Bonds, by reason that they are payable to the Bearer. And his Answer was, That there was no necessity of taking those Securities; such might be taken as are transferable in the Books of the Company.

On confining others upon this, I found, that as to *Ex parte* and *South-Sea* Bonds, wholly to disallow the taking those Securities would be bad. Many People choose them, because there is little Variation in the Price, only sometimes a few Shillings higher or lower; whereas in *Antislavery*, and much more in other Stocks, the fall of the Price, by the Time the money was to be paid out, might eat up the Interest and more. That there would be a Difficulty to dispose of those at that Time in the Hands of the Masters; probably the Owners would not consent; it had been their choice, that had determined the laying out of the money upon these Bonds, to that tend them to the market all together would occasion a fall of the Price, and a great Loss, which would raise a Claim, and give great Dissatisfaction.

I thought these several things had great Weight, and deserved most serious Consideration. I then thought of locking up these Bonds in Chests, with two Locks, one to be kept by the Master, in whom they belonged, and the other by the next Master after him, and to take the other Securities in the Name of two Masters.

But I was told by Persons of great weight, that that was but two Masters instead of one, and would not be satisfactory: And should I give more of them, it would occasion more trouble, and possibly more charge; but they were still Masters.

At last I resolved to take the Securities (other than the Bonds) in the Names of two Masters, and a third Person to be named by the Parus. But still I stuck at the Bonds, and was never set right in that, till it was too late. But I have now learned, which neither I nor Mr. Lightfoot, as your Lordships may observe by his Evidence, had skill enough to know, that they might be indented to two Masters and a third Person, and so the Property be fixed in them; which, had I afterwards continued Chancellor, I was determined to have put in Practice.

As to the Cash, how that might be made secure, his whole Proposal is contained in these Words, in the second Page. "The Deposit to be put out at Interest, to raise a Fund for the Payment of Mr. *Dumro's* Debt, together with our Office, would in a great Measure be a Security for the Cash, with which we should then only be intrusted." By the Deposit he means that of 2000*l.* or such other Sum as should be agreed upon, as I before read to your Lordships.

This is the Nature of his Proposal, with relation to the Security for the Cash; which I apprehended must appear to be neither practicable, as I observed before, nor satisfactory. And had I built upon this, and made a Regulation accordingly, I was very apprehensive that that were before dissolved, would call it trifling.

He then takes Notice of the money being lodged with the Masters very effectually, though it is by way of answer to an Objection, that every Master may not always have such a Sum in his Hand; to which he answers: "I need not say, it is far from possible that can happen, if the Money is directed as usual by your Lordship and the Master of the Rolls." And then he bids (to have the Cash laid upon this) "without which the Masters cannot stand themselves in the Front of *his*, *Dumro's* Affairs." And says at the 30 Page: "If I have the happy opportunity to have offered any Thing that is predicable by your Lordship, when I have the Honour to be admitted to wait upon you, I hope to satisfy your Lordship, that I shall wish Pleasure contribute, as becomes me, to facilitate any Undertaking of that Kind."

I think this proves what I said in the beginning; and I submit it to your Lordships, whether I am criminal in not complying with these Proposals.

My Lords, I have told your Lordships several Thoughts I had about the Securities. Give me leave to mention something of my Thoughts, with relation to the Cash.

I thought to take a small Security would only show that I was convinced that a Security was necessary, and yet tried in it; and those that were willing to find Fault, would say, it was done only to amuse the Sutors, and sell them into a false Security.

And till I could adjust the matter of the Securities lodged with them, particularly the *Ex parte* and *South-Sea* Bonds, no Security, that it would be practicable for the Masters to give, would bear any Proportion to what was in their Hands, when it should be 30, 60, or 80 thousand Pounds.

But if I could contrive to make all the Securities safe, and reduce the Cash into a narrower Compas, by making Orders for putting out the money of Course, whenever, through neglect of the Parties, or otherwise, it should happen to be beyond such a Time; then a Security might be given by the Masters to answer it.

But, as I told your Lordships, the *Ex parte* and *South-Sea* Bonds were too hard for me, till the matter was before the Committee of Council; and had the Masters behaved themselves, as I expected they would in the matter of their Accounts, I then intended to have laid my Thoughts before the Council, and to have had their Authority and Sanction for putting them in Practice.

The other Proposal supposed to be made to me, is spoke to by Mr. Kynsley, and him only. And though he says all, or most of the Masters, agreed to it, and thereupon he went upon me about it; I do not find that any of the rest knew any Thing of it. I observed, that neither Mr. Lightfoot nor Mr. Lightfoot (both produced to this Article) are examined to this great matter, upon which the Masters are said to be agreed; nor is any other Master called to it, though his account of it is so very unimpeached, and stands in need of being explained, as well as supported. As to the Securities, it reaches not all; the Bonds are left under the same Difficulty as before. And as to the Cash, he mentions no Sum or Value in which the Security was to be given.

But, my Lords, upon the whole, both from what Mr. Kynsley and Mr. Lightfoot say, it plain they were consulting their own Interest, to keep the Office free from Incumbrances: And their Interest and mine (if I could have any in view) was the same: So that if it was their Proposal, what should hinder me from agreeing to it, but that I thought it inefficient?

The third Thing charged in this Article is, That I did not take the Masters Accounts, that is, Accounts of what Effects of the Sutors they had in their Hands.

My Lords, It is true, it was proved to be done by my Lord Gough at his Entrance into the Office, but he left and died soon after; it was done by another noble Lord, as has been proved at your Lordships Bar, once, and I believe it was done by that Lord officer.

My Lords, Had I taken their Accounts too, I doubt in me it would not have had the same Approbation, as it had in their noble Lords. In my Case it would have been asked, What care I had taken to be sure that the Accounts delivered me by the Masters were true? What



ther I had from the Securities and Cash? And what Satisfaction I had, that they were able to make them good? I should, perhaps, have been told, that without that, the bare taking of an Account was of no use. And these Equities were of such a Nature, that if they were to be pursued effectually and with exactness, I own I had not strength to go thro' them.

Nor did I think the taking Accounts from the Masters necessary, because I do still take the Liberty to say, I was fully persuaded, all the Masters were good and honest men; and if they were not, I do not see it would be of any use to take such Accounts. For I would be glad to know, whether if I had taken an Account yearly from every Master, he would have been one halfpenny richer or poorer, or at all more able to pay the Sutors?

Oyl. It is said, indeed, that all these were wilful Omissions; and for fear the Price of Places should be sunk.

Ryl. But of that there is not the least Proof, and the Circumstances of the Case above set forth, I hope, give a much more natural account of it. And the Difficulty what to do in such a case cannot be expressed by any Words I can make use of, so strongly as by what has passed, since I order'd the Money and Effects to be locked up, and lodged at the Bank, which were intended (and so the Order of the 17 December expresses it) to continue there only till the Affairs could be more maturely considered, and a proper Provision made for the Security of the Sutors. Five months are now elapsed, and nothing has been yet done: Though the Sutors suffer vast Inconvenience. For, in order to get any money from thence, there must be a Master, and a Sub-Clerk, and two Directors, and a Certificate from the Register, which occasions so great an Expence, that, in the case of small Sums, People do not think it worth their while to go for them to the Bank, but chide to be without their Interest, rather than come at it through so many Difficulties. And if the Lords Commissioners, some of them, such great Men, have found this matter too difficult to settle to their Satisfaction; is it a Crime in me, that I was not able to discover a method for making things easy and secure?

This Article is closed with the great Deficiencies that have happened with regard to the Effects of the Sutors.

But, my Lords, give me leave to say, if that Deficiency have not happened by any fault of mine; if these misfortunes, which have befallen some of the Masters, be not owing to any Crime in me, no part of all that is charged in this Article, ought to fall on me as my share. As I have observed before, the great danger, which was at first apprehended, and so often talked of by Mr. Lightfoot, related only to the Securities, which the Masters had in their Hands; but that which happened related to the Money only. And thro' this Accident fell out, whilst I had the Great Seal, yet it might as well have happened in my Predecessor's time, since nothing that I have done has given the least occasion to it.

But is there, at last, any Deficiency made out to be in these Masters, by which the Sutors are so to be Sufferers?

Mr. Thompson has been called as a Witness to prove these Deficiencies; but he only shew an Extract of Berne's Deficiency, and that some of the present Masters had not paid in their Balances at such a time; and how much the farther Sutors they were to pay amounted to.

But have the Sutors therefore lost the money? No, my Lords, that does not appear; but on the contrary,

Mr. Cowper, one of them, and whom they have themselves produced as a Witness, has sworn, that he has signed an Estate sufficient to pay all his Deficiency.

One of the managers was pleased to own that he meant by Deficiencies, the money not yet paid in, my money not paid in at my time of making the Orders ready; and did admit, that since those Orders, there had been Satisfaction or Security for the most part.

But, my Lords, it is the Lots of the Sutors, that alone can give ground to complain.

The Order concerning Mr. Bar. Sturt mentions his Deficiency to be only 750*l.* and 175*l.* repaid by him to be in the hands of his Predecessor and me.

The latter Sum of 175*l.* is brought into Court. And we have shewn that Mr. Hinch, his Predecessor, has petitioned, that he may pay in the 500*l.* which is the whole Deficiency. And here appears a considerable Estate, of I think 750*l.* per annum of Mr. Barne's besides.

Mr. Kynaston's Deficiency is represented to have been before Christmas 26, 208*l.* 1*s.* 4*d.* arising all, but what he paid in in my hands, and the hands of Mr. Rogers his Predecessor, only hence, that his Cashier was dead intemperate, and Administration dispersed; and so he could not come at the money.

There is paid in by me	1573 <i>l.</i>
There is offered to be paid by Mr. Rogers, and will be paid	6000
A Debt from Mr. Delahay, which he swears a just one, is assigned	20,850
	In all
And the Deficiency being computed at	28,425
	26,908
	11 31
This exceeds it in the Sum of	1516

And he has an Estate of between four and five hundred Pounds a Year, and Timber of the Value of 3000*l.* to make good any part that may not be got from Delahay's Estate, though his Effects are in one of the Reports

mentioned to have been then found to be in *Locum aliquo alio* 30*l.* And I have heard that the Lords Commissioners have ordered Mr. Kynaston into Chancery, and that 10 or 12 thousand Pounds are to be brought in.

What is said to be Mr. Barne's Deficiency, is the foot of an Article which the Report that represents it, and Mr. Thompson in his Evidence could not be properly taken.

And when fully examined upon, there may come out to be no less either. Mr. Gifford swears Mr. Barne to have been in good Circumstances when assigned, to have an Estate; to have sold an Office for, I think, 5000*l.* upon the Occasion of his coming in Master, to have been with small Expence, his Wife's Father maintaining his Family. And, if he enjoyed the Office four Years, there can be no great Deficiency, probably will be made at last.

But, my Lords, it is extremely hard upon me, if by these productions an uncertain Estimate. I was to be obliged to have the Accounts of one who is dead, whose Administrator is Solicitor against me, without searching into his Papers and Affairs, and giving a perfect Account to the Court. It is exceeding hard, give me leave to say, that your Honours should be judging upon me as criminal, from Facts of that Kind, which I am an entire Stranger, when there is nothing like Fraud, and there will be a Faithful Deficiency at last, but only that the money not yet come in.

I beg leave to observe one thing more, That the Masters, that are called the deficient Masters, are not one of them in Custody; though it made an Article against me, that I did not commit Mr. Dorrer, who is an *Assised*. Therefore, that they are at Liberty, it will be taken in granted, that the Lords Commissioners had good Reason not to commit them; and yet their Deficiency, which is not a Crime in them, suffices to justify the committing them, is to be made a Crime in me, sufficient to support a Charge of High Crimes and Misdemeanours. Your Lordships let me know how far that ought to affect me; and I submit, upon what I have said, whether it can support the Charge in this Article.

XIX. As to the 19th Article, which relates to what was done about taking the Accounts. It charges,

1. That whereas his most Sacred Majesty, out of his Fatherly Goodness to His People, did in or about the month of November last, direct an Enquiry to be made into the Accounts of the Masters of the said Court of Chancery, to the intent that proper methods might be taken for the Security of the Sutors of the said Court, the said Thomas Earl of Macclesfield, being then Lord Chancellor of Great Britain, and one of his Majesty's most Honourable Privy Councillors, in order to obstruct the same, and to prevent a Parliamentary Enquiry into the State and Condition of the Offices of the said Masters, in Breach of the several great Trusts reposed in him, did give Advice and Encouragement to the said Masters, to add and singly each other with money and effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear able and sufficient, and that if they made a bold Stand out, it might prevent a Parliamentary Enquiry, or so that Effect; and did persuade several of them to make false Representations of their Circumstances to his Majesty, by adding a Substantiation to their respective Accounts delivered to the said Earl, to be laid before his Majesty, to the Effect following, viz. That they were able to answer the money and Securities in their Hands, and were willing to pay the same to such Persons as were entitled thereto; although the said Earl knew, or had good Reason to believe, that several of the said Masters were not then able to answer the Balance of their Accounts, nor are they yet able to do so; only to make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of the Sutors in their Hands, some of the Masters, according to such Advice and Encouragement given by the said Earl, did supply others of them with Cash and Effects, to make a false Shew and Appearance of their Ability and Readiness to answer the Balance of their Accounts."

My Lords, the two things, which are made the Head of the Charge in this Article, relate to the Subscriptions of some of the Masters written under their Accounts; that they were able to make good the Balances and their afterwards producing Cash, to make a false Shew and Appearance of their Ability. As to the first, I take it, that the material part of the Charge is, that I persuaded them to make false Representations of their Circumstances by a Subscription which I knew, or had good Reason to believe, was false.

As there is not the least Proof offered that I knew or had reason to believe the Subscriptions false, this Charge I think entirely falls to the Ground.

Upon the Proof attempted to be made, I think it appears, that what Mr. Hylford brought in his Account, pursuant to my Order, he (without my knowing any thing of it) had wrote a Subscription at the End of it, to the Effect: "I have all these Securities standing in my Name, and in this Account is specified, and will procure Certificates from the proper Officers, that I have and had them before this Account, if your Lordship require it; and as to the money, I am ready to give your Lordship Satisfaction in a Demonstration, that I have it; my Power is under it to every Person, that shall appear to be entitled to it, and who can give me a legal Discharge."

They say, I read it, and spoke of it with Approbation.

There were only Part of the Masters ready with their Accounts; and Mr. Leake was the next, that delivered me his, and he had wrote out the same Effect in Substance, only as to the Cash, he wrote that he was ready to give Security.























And upon reading the Act it is evident, that this Statute in the *Proem*, and throughout the whole Act, treats this way of dealing, as a *Corruption*, and illegal in its Nature, and expressly calls it so. The *Proem* itself says, *For the avoiding of Corruptions, which may happen hereafter to be in the Officers and Ministers in their Court and Place, where there is Request to be had the true Administration of Justice or Service of Trust.*

And this Statute carries the Punishment farther, but does not take away the Punishment of it as a Misdemeanor at the Common Law, by *Fine or Imprisonment upon Indifference.*

And there is not any *Proviso* in the Act which mentions or exempts the *Court of Chancery*, or any of the Officers of that Court, but an consequence, when it mentions other Courts in a *Proviso*, must more strongly be intended to include them in the Act.

The first *Proviso* extends to Offices of a private Nature, and to Offices of Intendment, and cannot relate to any judicial Office, nor to either of these Officers, who hold only for Life; although, where the Nature of the Office has allowed it to become inheritable, it makes it allowable; but no such instance is to be met with in the List of judicial Offices.

The second *Proviso* is to prevent any Person's being surprised into the Penalty unwittingly, before Notice of the Act, or by a Retrapect. And although the Statute takes Notice that divers Persons did make false corrupt Bargains, it is only by Way and with an intent of preventing, and not of legitimizing them; and it leaves them all as they stood at Common Law, until they are appointed by the Act to be called.

And the last *Proviso* does nothing more, and leaves the Justices to act upon their own Knowledge and Discretion in the Law, according to the Nature of the Office, without calling any Imputation upon them unnecessarily.

But to exceeding customs was the Legislature, that there is not any Exemption, in any Part of the Act, to declare or enact false Bargains in the Cases excepted, to be good.

But the Statute leaves them entirely to the Regulation and Direction of the Common Law and former Acts of Parliament.

So that although the *Earl of Macclesfield*, by his being dismissed from the Office of *Lord Chancellor*, is not liable to suffer the additional Punishment, contained in this Act, of Loss of his Office: Yet he will still be liable to the Punishment at Common Law, and upon the several other Statutes, and accordingly remains open and subject to your Lordships' just Sentence.

For where a Statute does give or impose a new Penalty, for a Matter which was an Offence at the Common Law, the Prosecutor may pursue either of the Remedies; although where a Statute makes or creates the Offence, that Remedy must be taken which the Statute gives.

*Rogers and Wife v. Peck*, 4. *Ann. Bann*, *Rogers* 240. *Gr. Litch*, 2. *Mod. 2*. *2d. 32*. *Dr. Hogg's Case*, 9. *Co. 74*. *Cromwell's Case*, 2. *Hill. Rep.* 49. *Bargen's Case*, 1. *Ter. 13*. 2. *3d. 429*.

As I have gone into this long Debate, to show that the Common Law has treated their *Articles* upon the general Rules of the Common Law, supported and assisted by former Acts of Parliament.

As to the *Proem*.

I shall now take Notice of the Evidence upon the particular *Articles* offered to me, and shall observe not only upon the Proofs given by the Counsel in maintenance of their *Articles*, but likewise upon the Examination made on behalf of the *Earl* impeached, and in his Defence.

As to the *first Article*, I shall make this general Observation upon the Evidence, that it has been agreed by all the Witnesses examined thereto, as well by Mr. *Lawson*, the *Earl's* Secretary, and on their Comrades his Landlady's Brother, as by the *Witnesses* themselves, and their Agents, that the whole Transaction was done as stated, and the Money actually paid and delivered into the *Lord Chancellor's* own Hands (except Mr. *Warburton's* Five Thousand Guineas, which were delivered to another for his Landlady's Service) before the Relinquishment of the former Office was accepted, and before the Admission and swearing of the Successor.

So that the principal Point and main Stress of the *Articles* are thus at last agreed upon by both Parties.

But as to these *Articles*, and more particularly with respect to the One Hundred and Five Pounds received from Mr. *Thomas Bann*, and the Fifteen Hundred Guineas each received from Mr. *Knox* and Mr. *Bennet*, the *Earl* and his Counsel have suggested a Deficiency in the Proof, and/or from a Contradiction in the Evidence given by Mr. *Cottingham*, the *Earl's* Secretary, to what has been sworn by Mr. *Bennet*, Mr. *Knox*, and Mr. *Charles Burt*; and, upon the Credit of the Secretary's Testimony, would suppose that each of these Sums proceeded first from the free and voluntary Offer of the *Mortgagors*, and was not raised upon by the *Earl* or his Secretary before-hand, as charged in the *Articles*, and proved by the *Mortgagors*, but only accepted and received by *Cottingham* and the *Lord Chancellor*.

But the Nature of the Transaction, and the Circumstances of the Persons, do very strongly support the Credit of the *Witnesses* produced by the *Commons*, and the Probability of their Testimony, who have proved every Part of their *Articles*, in the very Words of them; and Mr. *Cottingham* himself has confessed enough to maintain the *Articles* in such Evidence, although he should be credited in any Circumstance wherein he varies from the other *Witnesses*.

As to the *second Article*, it will be very difficult to believe that Mr. *Bennet*, who had lately paid the *Lord Chancellor* so large a Sum for his Admission to the Office of a *Justice*, which he had succeeded in his Brother, and who had paid no Advantage Money for this Place of Clerk of the *Chancery* to the former *Chancellor*, the *Earl* *Cropper*; and who had likewise been informed by his Brother Mr. *John Bennet*, that nothing was paid by him to *Earl Cropper* upon his being admitted to the same Office, and that *Earl Cropper* himself had declared to Mr. *John Bennet* that there was nothing due upon his Admission, that Mr. *John Bennet*, under their Circumstances, should of his own Accord first propose a *Proviso* (as it is called) when he could not well imagine that there was any Pretence to it; that is hardly credible.

And *Cottingham* himself has owned, that he told Mr. *Thomas Bennet* that something was expected, and that he turned the *Pragmatic* of One Hundred and Five Pounds to the *Earl*, who accepted it, and thereupon he received the Money from Mr. *Bennet*, and paid it over to the *Earl*;

after which the *Earl* then took the whole Care upon himself of expounding the *Sign Manual* and the *Patent*.

Now, *Cottingham* being the *Factor* employed by the *Earl* in all his Bargains, who has been sworn by the *Earl* to be his Agent, and been produced as his *Witness*, and supported by him; every Thing *Cottingham* declares and adds in composing their *Complaints*, will be considered as the Act of the *Earl* himself, and his own swearing; especially, when *Cottingham* (as he deposed before your Lordships) did conclude the *Bargain*, and he had received the *Earl's* Approbation thereof; and when the *Earl*, as the *Earl*, confirms the whole by his Receipt of the Money.

And a *Lord Chancellor's* expounding something, or a Sum of Money, is no more or less, and thus has a Specification declared and notified by his Secretary to the Person applying to be admitted into the Office, is a peremptory Demand, and an intimation, when the *Lord Chancellor* alone, and no other, has the Power of taking the Relinquishment, or making it effectual by giving the new Patent, and of admitting the new Officer.

But this Matter has been explained and confirmed by the Evidence of *Dupper* the *Under Secretary*, the *Earl's* own *Witness*, upon whose Authority the *Earl* relied, who acquainted your Lordships, that upon the *Chancellor's* telling him of the intended Surrender of Mr. *Thomas Bennet*, *Dupper* said, there ought to be an Acknowledgment to the *Great Seal*; and he had heard that Money had been given, which *Cottingham* himself at first doubted of; but *Dupper* soon satisfied both the *Earl* and his Secretary that Money might be paid.

This confirms the Evidence of Mr. *Thomas Bennet*, that Nothing was said about Money to be given, or an Expectation of Something at that Meeting with *Cottingham*, but it was introduced by *Cottingham* at this second Meeting; which must be before this Advice, and Information of the *Earl*; and that then the Relinquishment was taken of expelling a Sum of Money.

This argues the Diffidence of the *Earl* imputed in sitting up the Pretence, and his Suspicion of the Illegality of it; yet the Opinion of the Person advising, and the *Earl's* own Inclination to Gain, were too powerful to be resisted.

But to remove the Foundation of this Objection.

The *Patent* or *Change* of these *Offices* has in the taking these Sums by the *Earl*, either as *Agent*, or as *Lord Chancellor*, and without Right, which is *Extortion* and *Corruption*.

And if he did receive these Payments by Colour of his Authority, and without Right, (and he has made out no Pretence of Right) he will be guilty of the Crime charged upon him, in as much as I a Member never be transfused these Distinctions.

It will amount to the same, whether they proposed the Sum to him, or he made the Demand upon them; and if Surrendering to a *Justice* was expected by him, and he declared during the Day to *John Bennet*, Clerk of his Office, until that Something was offered and paid to him, it is an *Extortion* and an *Imposition*, which is criminal, and sustains the *Articles*.

And it is remarkable, that the *Earl* would never give Credit for his *Practise*, but always had it in his own Hands, before he admitted the Officer.

It has been intimated, on behalf of the *Earl of Macclesfield*, to prove that former *Chancellors* have used to claim and receive Money upon the taking Surrenders, and making new Grants of this Office; but herein the *Earl* has failed, and has not been able to give legal Proof of any one Instance of that Kind, upon the Change of this Office of Clerk of the *Chancery*.

For *Dupper* did not see any Money paid on that Occasion, nor knows any Thing of it, of his own Knowledge, but only spoke an Assent which he came by very oddly, wherein (as he says) there was an *Item* in the *Record*; and his Evidence depended merely upon Hear-say, and ought to be rejected as No Proof.

The Evidence of Mr. *Earl* varies against the *Earl's*, for although there were Surrenders in both the Times, when *Earl Cropper* held the *Great Seal*, yet Nothing was paid or taken by him; and upon the Surrender of *Thomas* to *Edward* in the last *Queen's* Time, it was said that Nothing was given; and upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, whilst *Earl Cropper* enjoyed the Seal under his Majesty, nothing was paid or claimed.

And the supposed Intimation or Opinion of *Earl Cropper*, which *Other* mentions, was between these two last Sums, which makes it very unlikely that *Earl Cropper* should make such a Declaration; yet if such Difficulties there were, it is plain, that, upon better Consideration, the *Lord Cropper* departed from such Pretensions, and discovered an Expectation of any Thing, upon the last Surrender and Grant of this Office.

And as Nothing was taken by *Earl Cropper*, upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, it will be proved, that the Surrender of Mr. *Edward* to Mr. *John Bennet*, *Earl Cropper* refused to hear of a Pretence, when it was hinted at, and declared that Nothing was due to the *Great Seal*.

But this Defence, which is founded upon a supposed Usage to receive a Fee for permitting such Surrenders, and from thence would infer a Right, or an Assent to the *Earl* impeached, in doing the like, is a Proof and Confirmation of the *Articles*, as charged by the *Commons*; That the *Earl* did inflict upon the Money, as his Right and Due.

ART. V. As to the *Bargain* with Mr. *Knox*, it appears from his Testimony, and the Evidence of Mr. *Charles Burt*, who paid the Money, that Mr. *Knox* had endeavored to obtain the Admission at a lower Rate. At first he offered but was answered *Guinea*; and at the *Earl* Mr. *Burt* understood and it to have been agreed for at fifteen hundred Pounds; and when Mr. *Cottingham* had taken hundred Guineas were expected, *Burt* did not proceed till he had intimated Mr. *Knox* to the contrary, who succeeded, that since Mr. *Cottingham* had mentioned such Sum, he must submit, and be accordingly.

And the Dispute, upon the Difference between *Four* and *Guinea* only, explains the Manner of their Dealings; I but this was mutual Contracts and Bargains between the Secretary and the *Earl* *Burt*, at the best Price that could be got; and though there was no Bargaining with the *Earl* himself, (as *Cottingham* expected it at one of these Dealings) yet he had a faithful *Witness*, who could and did divulge very well for him; and when the Secretary had done his utmost, the *Earl* accepted the Price which had been agreed upon.



ART. VI. As to the *five hundred Guineas* paid by Mr. Thomas Bown for his Admission, and the Manner of making that Bargain, Mr. Bown's Evidence of his first offering *five hundred Guineas*, and Cottenham's Refusal of it, being, *deposed* Mr. Bown would not leave the *Prize*, and the *Prize* as to his *buic* *refusal*, and that there was no bargaining with the Lord, and as to *Lord's* offer, for *five hundred Guineas*, is supported from the *usual* *testimony* of Cottenham, as well as from the Probability of the thing itself, that a man may reasonably be presumed to endeavour to lose what he can, and when he is purchasing, to get it at the cheapest; altho' (as it has appeared upon the Examination) Mr. Bown had little Reason to expect that a succeeding *Clavender* would be satisfied with his Circumstances, and admit him.

Upon the Earl's Defence against the Charge contained in these two Articles, it was proved by his Counsel, the *Register*, that the Earl, about the end of February last, had paid these *five hundred Guineas* into the Court of Chancery, to be applied to for the Benefit of the *Suitors*; and that this offer'd either in his Discharge, or as a *Ment*. But this was done several Days after the *sequestration*, and when *plaint* *Complaint* had been made against the Earl upon these two Indentures, and is a very proper example of the Earl's *own* *Conduct* of a voluntary *Prize*; for after the *High of Common* had taken this Affair into their Consideration, and had demanded Justice and Satisfaction from the Earl by a Parliamentary *Provision*, the Earl then did *freely* and *voluntarily*, and of his *own accord*, make a *Prize* to the *Suitors* of the Court of these *five hundred Guineas*, which he had, in the like free and voluntary manner, received as a *Prize* from Mr. *Argyle* and Mr. *Bacon*. And this Action contradicts his whole *Defence*, and shews that he was convinced that he had no Right to receive or detain the *Money*, and was afraid to keep it any longer.

ART. VII. and VIII. As to the *five hundred Guineas* received by the Earl from Mr. *Edle* and Mr. *Thaynes*, it is prov'd that the *Prize* was made between *them* and Mr. *Cottenham*; and when Mr. *Edle* (of whom the Earl expected to be good an Opposer) offered *five hundred Guineas*, *Cottenham* refused *Guineas* were *handy*, and the particular method of Payment shews the inward Rebukes of his Conscience, and his Fear of a Discovery.

And shew how *far* the Prevalency of his Avarice, above any other Passion. For Mr. *Edle's* Case, he broke thro' the Obligation at *Gratitude* and *Friendship* in 1721, to give his money in a secret manner, as a *Bribe*. And in Mr. *Thaynes's* Case, he tried to beguile his Earl of a Discovery, by insinuating the necessity to come to him thro' a private and unsuspected Hand.

And that *two* *Indentures* were of no more a Nature, than his faithful Secretary's own'd, that he was not admitted into the Secret. For it appears that the Earl either knew or suspected there would be a *Letter* in *Brown's* Office by his Indolence, tho' it was not return'd to any Certainty; and it now appears, at the last, to amount unto *nothing* *Indentures* *Prize*.

But the Earl left the *Suitors* of the Court to bear that Loss, and never thought fit to procure a *Bill* *Sequestration* to issue. Which the *Commons* argue both as an Evidence in the Argument of his Guilt, since he therein prefer'd his own private Gain to that Security, which his high Trust required him to have provided for the *Creditors* of the Court.

And the returning great Part of these *five hundred Guineas*, after the Confession and Disavowal of the Court became publick, and Part of Mr. *Edle's* money, after the *Mythral* had been call'd upon to being in their Cogs, and which upon Mr. *Edle's* Evidence may be reasonably presum'd to have been made use of by him to make a *false* *Shew* before the *Commons*; are rather *Diresses* against himself, than any Extenuation of his Guilt.

And as to the Earl's great merit, who he so largely dwelt upon, and often repeated, that he might have had *five hundred Pounds* from Mr. *Edle*, who he willingly, to accept of *five hundred Pounds* from Mr. *Edle*. The Managers will call Mr. *Edle*, who (in answer to Mr. *Edle's* Testimony) will prove, that when he offer'd the *five hundred Pounds*, it was upon this express Condition, that if the *Money* of the *Suitors*, or the Cogs, was taken out of the *Mythral* Hands on a Parliamentary *Expunge*, he should have a Return of some Part, and that the Earl should indemnify him against all Deficiencies.

So that the Earl did not refuse Mr. *Edle's* *five hundred Pounds*, from a Disinclination to the Sum, if he could have kept the whole securely; but because *five hundred Guineas* paid absolutely, was better than *five hundred Pounds* subject to a Condition of refunding, and incumbent with an Imposition of indemnification.

But the Earl's chief Defence is made from the Preface of his *Prologue*, who (as he pretends) *delivered* into these *five hundred Pounds*, and he has prov'd *five hundred Pounds* to have been paid by Mr. *Edle* and *five hundred Pounds* free, and eight *hundred Pounds* by Mr. *Edle*, and *five hundred Pounds* by Mr. *John Bown*, in the Year 1726, upon their *own* *Admission*. And the Earl's *Admission* and from thence, *indistinctly*, that *Edle* he can't shew the exact Sum of *five hundred Pounds* receiv'd by himself upon *Admission*, as a certain and establish'd *Fact* or *Persuasion*, because he has taken note in *much* *the* *Prologue*; yet he *Prologue* *Prologue* a *Right* *Prize*, and *avows* in his *own* *Discretion* to *decide* *any* *Prize*, as he should think reasonable, according to the *Law* *Incumbent* of the *Business* of the Court.

But, a *Prize* altogether uncertain in the Quantum, and depending in the measure upon it, *Discretion* of the Person who is to receive it, seems to differ very little, if at all, from a *Prize*.

The Earl insists likewise, that the Denial or Refusal of some other of the *Witnesses* to answer his *Testimony*, is a farther Proof that they paid money.

This shews that the Earl thinks he wants the Proof very much, when he makes use of such an Argument to raise Evidence.

The *Witness* refuses to answer such *Testimony*, which he is not oblig'd by the Rules of Law to do, concerning the manner of his Admission, and the *Commons* cannot call *Witnesses* to contradict or explain that which has never been deliver'd in Evidence.

Yet the Earl desires his Lordships to believe this as Evidence, tho' the record did bear it, and to ask and vote, upon *your* *Honour*, as if you had heard and admitted it.

But however the Earl may have directed himself, he can never think that such an unjust Information will prevail upon *your* *Judgment*; or that he can thereby move *your* *Lordships* to give up or *House* in the highest Exercise of your *judicial* Power.

And therefore or *other* *last* Influences, which he has produced, cannot change the *Commons* *Law*, or repeal the several *Acts* of *Parliament*, whereby

they are declar'd illegal; and if he makes use of them as *Presidents*, he ought to take them with all their Circumstances, which upon the whole matter rather runs against him. For Mr. *Hayford* and Mr. *Lawson* were at that time, and still continue *Men* of Substance; and Mr. *John Bown* was of Ability at the Time of his Admission, altho' in the Year 1726, he fulfill'd a *several* *Losses*, which impair'd his Estate. And they all paid the *Sum* of *Money* mentioned out of their *own* *Estates*, and not Part of it out of the *Suitors* *Cogs* or *Efforts*. And the whole of the *Suitors* *Efforts* was deliver'd over to them by an *Account* with which they stood charg'd.

So that *these* *three* *few* *Indentures* were not introduced upon, either because they were not publicly known, or that an Inconvenience did ensue thereon; yet they will afford no Excuse to the Earl's impudence, for taking *double* or *triple* the Value of those *Sum* upon his Admission of *Mythral*, who were Persons of *small* or *moderate* *Estates*, and who were needful to employ the Cogs and *Efforts* of the *Suitors* in the Payment for their Office, and for their *discharge*; and thro' whose Indolence so great a *Loss* and *Damage* came upon the *Suitors*.

But an Officer of publick Trust and Service ought to look well to his *Prudence* before he follows them; and if he will perform an illegal or unjustifiable *Prudence*, he does it at his Peril, and mall answer for the Consequences; especially in the Situation of the highest Officer in the Kingdom, who was intrusted with the Administration of public Justice, in the *supreme* Court of *Law* and *Equity*, and whose Day it was, as well to declare and expound the Law to others, and to regulate and reform the Exactions and Abuses, which at any Time may have crept into the inferior Courts of Justice, to the Injury and Oppression of the *Suitors* of other Courts, as to prevent or suppress Corruption and Extortion in the Court where he was immediately employ'd.

ART. XI. As to this Article, the particular Circumstances of Mr. *Kynaston* and Mr. *Thomas Bown* have been prov'd, and the Deficiencies in their Office, and how unequal they were to the Trust of the great *Sum* and *Efforts* deposited in their Hands.

By the Orders of the Court, which have been read, it appears that Mr. *Kynaston's* Deficiency amounts to 26,998*li*. 11*s*. 3*d*. 2*d*. and Mr. *Bown's* to 16,075*li*. Mr. *Kynaston* had about 20,000*li*. in money and effects of the *Suitors* in his Custody, and Mr. *Thomas Bown* near 20,000*li*.

It is likewise a high Branch of Trust in the Earl, and is an Office upon the Statute of 12 *Rick*. II. cap. 2.

12 *Rick*. II. cap. 2.—That they must all *faithfully* and *adversely* of the *highest* and *lowest* *Trust*.

Which Words in the Law import Sufficiency of Substance, as well as Capacity.

And the Statute *His* *Vol*. cap. 20. takes it far granted, that the *superior* Officers were before that Time under the Obligation of the *Commons* *Law*, or some former Statute to that Effect; when by the said *Act*, 2. *His* *Vol*. cap. 20. Sec. 4. *Act*. 11*th*. inserted, *What manner of inferior Officers* shall be appointed in the *King's* *Courts*, it is enacted, *To the intent* that *inferior* *Officers* *shall* be *appointed* in the *King's* *Courts*, for the *King*, for his *Profit*, and *Use* of his *People*, which *shall* be *payable* and *useful* to the *King*, as is *ordained* and *established*. That all the Officers made by the *King's* *Letters* *Patent* *Royal* within the said *Courts*, which *shall* be *payable* and *adversely* *service* of their Office, at all Times *acquired*, to *appoint* *Officers* and *Ministers* within the said *Courts*, *shall* be *charged* and *sworn* to *appear* such *Cogs* and *discharge*, for which they will answer at their Peril, which is *significant*, *foolish*, and *unbecoming* to that which *personally* to them in *Performance* of the *Duties*, as well of the *King* as of his *People*.

This *Act* would have been extended farther, if it had been effected necessary.

The frame of both these Statutes shew the Intent of the English Constitution, to provide for the Ease and Benefit of the Subject.

But the old Rule *respondent superior*, will hold against the Earl in this Case, especially when it appears by the Evidence of Mr. *Gainsborough* the *Register*, a *Witness* produc'd by the Earl, that this Practice of paying money generally unto the Hands of the *Masters*, was not in effect his first coming into the *Register's* Office, about the Time of the Revolution. So that the Earl's impudenc'd took upon himself the Disposition of the *Suitors* money, without a proper Ground and Justification.

And the Offence contained in this Article does not depend upon his Knowledge, that the Persons admitted were insufficient and unable; but that the Earl did not require and take full Satisfaction and Evidence proper necessary, to make it manifest that they were able and sufficient, as had been done by his *Predecessors*; particularly, when Mr. *Hayford* was admitted *Mythral*, his Father was oblig'd to settle a *good* *Rate* upon him of good Value.

The Earl ought either to have *admitted* *Persons* equal to the great Trust and Charge, or to have reduced the Trust and *Duties* to the Condition and Circumstances of the Person, as his *Predecessors* had done.

So that it is evident the Earl had only in view the Price and Profit of the Sale of the Office, which would rise high upon the Inability and Unfitness of the Officer.

And it was therefore very properly laid by one of the Earl's Counsel, that he wou'd be the *Mythral* *to* be *admitted* them.

But he weigh'd them only for the Sake of the *Prize* they were to pay to himself; and when he had done with them, he left them of very little Weight for the Security of the *Suitors*.

His *Indistinct* *Deliberation* in open Court, upon the 21*st*. of *Jan*. 1723, explains his whole *Course*, when he publish'd from the Bench, *That* the *Mythral* *was* *Man* of *great* *Fortune* in *any* *Set* of *Mythral* *Ind* *to* *him*.

The Words were prov'd by Mr. *Palmer*, and have not been contradicted by any *Witness*.

At that time Mr. *Dorset's* *Deficiency* had taken Act, and Mr. *Walker* upon his Examination laid, *The* *Register* *to* *be* *one* of the *Officers* was *can* be *strong*, that the Publick *Law* *to* *be* *Abuse* *to* *the* *Mythral*.

But there was then a *Place*, and an Office to be sold. Mr. *Palmer* died 19 *Jan*. 1723, and it became necessary to give the Office a Representation.

And altho' the Insufficiency of some of the *Mythral* had been decently intimated to the Earl by Mr. *Lipht* an, upon his *several* *Proposals*, and the Earl may be presum'd to know the *several* *Apprehensions* of the *World*; yet in this solemn manner the Earl became an Officer to himself, to proclaim his own market.



ART. XII. The Fraud and Injury to the Suits can hardly be more aggravated than is expressed in the Article itself.

And it has been prov'd in every particular necessary to support the Article, and no Proof has been offer'd on the Part of the Earl to contradict or extenuate the Charge, by making appear his Negligence, or any Care or Regard to put an end to the said Consequences of the Practice.

The particular Methods of preventing this Fraud specified in the Article, are only to show the Practisability of some sort of measures proper to have been put in Execution, in order at least to render the corrupt Practice and Abuse difficult, altho' they had not prov'd complete in all respects to render and prevent them.

And by the Witness call'd on the Part of the Earl himself, it was expressly prov'd, that some of these Methods had been practis'd with Effect in the time of his Predecessors, and that no Loss had happen'd to the Suits during that Regulate.

An Answer of the Suits: Cash and Effects was brought to the then Lord Chancellor Hargrave by Mr. Holford, a Trustee of his Predecessor, before he was admitted, and he was thereupon allow'd if he would be bound by that Account, and stand charged accordingly. To which he agreed, and his Substance was sufficient to answer it.

The Cash Money was for some Years laid up in the Hands of the Treasurer of the Suits in Lord Chancellor Gough's Time.

And it has been prov'd, that the total Amount of all the Money has been taken three several Times within a few Years; that is, twice by Lord Gough, and once by Lord Harcourt.

And altho' the Earl seems either to doubt of his Authority, or of the Possibility of doing this in his own Time, it can be prov'd, that he requested to see the Account, and to be inform'd of this method, and accordingly had a Sight of the Books, and made an Appearance of putting it in Execution.

Besides, the late Account deliver'd in by the several Masters before the Commissioners named for that Purpose, shew, that such an Attempt was practicable, and might have been completed in a reasonable Time.

But the Earl of Macclesfield, by his own Carelessness, or pidity of a total Neglect of all Measures, and never prosecuted on hand and real Steps towards the suppressing this Abuse.

He might have given Directions, and made Orders for the securing the said Effects, in such manner before the late September, as he has done since. His Secretary and Agents might have executed the Collection of these Orders, and have attended in respect the complete Transfer of the Suits to Effect, as well as to secure his Lordship's extorted Pension.

And if after the Earl had taken these, or any other probable Measures, the Masters had broken their Trust, the Fault would have lain upon the Diffidenciness of the Masters, and not upon the Connivance or Negligence of the Lord Chancellor.

But upon this Article the Answer of the Earl himself is directly falsified. For he declares upon his Honour, upon that Honour which is commensurate to him from the Privilege of the whole Order of Peers (but of which he him self has only made a show or Appearance), that he was totally ignorant of this Practice; although it appears in Proof to have been a matter publicly known during his Administration. It was an Inducement to Mr. Agnew, and the single Temptation in Mr. Thomas Brown.

That Answer is a reasonable Evidence to charge the Earl with the Knowledge of a fraudulent Transaction propagated by himself; especially when the Pretence of his Ignorance will arise from the total Neglect of his Duty.

But expressly Notice is given of this case by Mr. Thomas Brown; and farther, that the Earl had been said to prohibit his Honour by a Council of Peers of this fact upon former Occasions.

For Mr. Brown in his Answer, which he had deliver'd in to the Judges, had asserted this remarkable fact, viz. that upon 31. either of Peers of Right, who had order'd him to be paid to Mr. Agnew, and the 1755. paid the Chancellor his due Money.

Mr. Agnew's Wife in his Answer had referred an Item to the same Effect for a like Sum.

Mr. Thomas Brown went forth afterwards to the Chancellor, who enter'd into Dispute with him thereupon, and said: I am very well pleas'd to give you Answer in this manner, it is now about 12. m. of the Earl; for all the World will now judge, that you paid for your Office out of the Suits Money, and what hath been by much paid, will now be deliver'd, while I have always order'd by much Paid to be deliver'd to me, and I am told the Difference is. And with it he had done upon such an account, Mr. Brown's 2. replies before Mr. Brown had given in his Answer, and he says it is such.

The Practisability of the Proof of this Evidence stands confirm'd from the Nature of the Thing, and the state of the Account in it, which has not been contradicted by the Earl; and seems likewise strengthen'd by an Opinion which the Evidence entertain'd, and which he drops on his Defence on 12. m. plan, viz. That the Suits were not the case by this Method; by his own Discretion the former Master would still offer all, and as he shew'd it. Mr. Motter's remaining four Parts of the Suits to Effect, the Difference in Mr. Brown's Office was not so large.

It is known a strong Suspicion of the Earl's Knowledge of the Practice when it had obtained his Approbation.

Not the Answer receiv'd by Mr. Motter was no part of the Proof of the Office, but were other Suits and Effects which he receiv'd in his Hands, and never paid over to Mr. Brown, upon the repeated Application and Request of the Suits, who desired Mr. Earl's assistance.

But, suppose the former Master had died, or said so in such Effects in his Hands, how should the Suits have been to take a legal Proof of this Transaction? And how many Persons was he to prosecute, to discover and receive his own Money?

It is impossible on this Part of Mr. Thomas Brown's Testimony has given Occasion to the Earl and his Council to object to his Credit, and an Endeavour has been used to make out, that Mr. Brown has contradicted himself, and has done it but 2. years. Lordships Bar upon his Oath, which he had formerly declared to other Persons.

For that Mr. Brown being allow'd to work an Intent to prove his Ability to pay the rest of his Discretion; whether he had not said, that Mr. Hockocks would pay him back two thousand Pounds, he would pay the rest himself, Mr. Brown should be said to have said, and yet, as they argue, the contrary is sworn by Mr. Holford, Mr. Thurst, and Mr. Earl.

In Answer to this Mr. Holford gave in Evidence, that Mr. Brown said, that if Mr. Hockocks would pay him back two thousand Pounds, he would take Care that the rest of the Money should be paid. But Mr. Brown did not say, he had the Money, tho' Mr. Holford believed he had by his manner of speaking.

Mr. Thurst deplored, that Mr. Brown declared he would make up the rest himself, but afterwards told him, that all he had in the World would not pay it.

And Mr. Ellis swears to the same Effect.

And this Testimony does not contradict, but rather confirm Mr. Brown's Evidence. For he made no direct Declaration of his Ability to pay the rest, but being liable to the Suits, he seem'd to be willing to get what he could from Mr. Hockocks.

Besides, his Discretion at these Times cannot stand in Competition with his Oath, according to the common Rules of Evidence; and a Witness's Oath is not to be taken away upon an unsworn Exaggeration, prov'd by each of the Earl's own Witnesses in affirming Words, when it from the Ambiguity of it in certain points be by any ordinary Construction.

But the Commons will condemn the Truth and Fairness of this Testimony of Mr. Brown, by proving that the Earl had receiv'd the same Concern and Dislike of the Manner of these Accounts in respect of their Abuse to others, before any Discrepancy Express.

There is likewise another method of Fall, which nullifies the Proof of this Article, which is, That the Price of the Office, and of the Abuses, are comprehended in the Accounts of the Masters Discrepancy, and make the greater Part of Mr. Brown's Discrepancy, in a new Money of Mr. Agnew's; which manifestly does Danger and Injury of this unjust Practice to the Suits, whose Estate is thereby put upon the Head of the Master's good or bad Success, and his Property lost with a distinct Effect.

And from the Circumstances and Manner of the Earl appear upon the highest Apprehensions.

The extended Proof made by the Earl is nullified upon the Effects which are deposited in the Court upon the Faith and Honour of the King's Administration under the Care of the Chancery, as Mr. Taylor, by whose Connivance (if not Consent) they are thus unbecomingly put into the miserable Suits, must either sit down with the Loss, or be forced to expend his little remaining Substance as a tedious Price to recover back his own Estate thus wasted and consumed by the Suits.

Unnecessary Delay and Intemperance of Orders are the unavoidable Consequences of this Practice, and in this manner the Business of the Court, and the Profits of the Masters Office have been increased by the Payment of the Parties after their own Effects, which at the Conclusion terminates in a heavy a Loss.

The late Orders made upon the Part of Mr. Hockocks and Mr. Rogers have the Impression, and some have the Trial command, tho' not proved to have been as yet comply'd with, and at last are but Deposits to attend the Event of the Council between the former and the present Masters, have been made use of by the Earl in his Defence; which is a new Attempt in him to make a false Show and Appearance of Restitution and Satisfaction. Altho' it is not a real and complete Return of the Principal Money, it would be a very small Excuse and Expiation for the said Practices done to all the Suits of the Court, by the locking up their Money, Effects, and Securities, and by tying the Payments thereof for so many Months, besides the Loss of Interest on the Cash, and then being hinder'd from the Redemption of their Money.

The Earl has not adventured to enter into a particular Discharge of the said Discrepancy claimed by the Commons, upon the Evidence of Mr. Thompson, and collected from the Accounts based upon the late Expiration, amounting to more than six hundred thousand Pounds. Nor has he given any Answer to the Loss of the Suits, which the innocent Suits suffer by the Intemperance of the two several Masters, Dances and Bore.

The Earl's Office and Discharge being upon a Court, where the Effects of the said Discrepancy are, as well as to suffer Peers to be taken out of their care, because a National Crime, not merely from the Extension of the Loss to the particular Suits, but likewise from the apparent Danger thereby arising to the Publick.

This general Answer weakens the Care and Zeal of the Commons in Particular to the said Fellow Subjects.

Has contradicted the Charge against the Earl in the Twelfth Article, which has been proved as an Allegation, viz. That by his neglect and Fraudulent Practice, the corrupt Profit made by the Earl upon the Sale of Office of Master of Chancery, has in Consequence been rais'd out of his own pocket, the Effects of the Court, for whom he was intended in Breach of the Trust reposed in him for the Purpose of his Office, and the Effects of the Suits, as well as the Discrepancy and Dislike of the Court, and in the great Injury and Depreciation of the Suits, in a Court of Equity which had for their Relief and Protection.

My Lords, the Effects of the said Discrepancy which the Earl's Office had done, were not Crime by the ordinary Rules of Law in other Courts, as they have been made out to be, yet they would be Crime of a publick Nature against the Welfare of the Subject, and the Common Good of the Kingdom, committed by the highest Officer of Justice, and attended with loss and mischief. Lay to a multitude of Disorders, and as such, they were deemed the Essence of the extraordinary Jurisdiction which he had taken upon himself, by virtue whereof your Lordships can inflict Death and Imprisonment upon whom you think proper.

When these Effects have been put upon the Earl's Discretion, of course, Confidenciness in Judgment can the Earl's malice and suppliance, and not be? Can they alter the Facts charged upon him? or turn Evidence from into Liberty and Pity? Can the Means of a free private Works alone for the Plunder of the whole Body of the Suits of the Court of Chancery, upon whom this Earl, by his Administration, has been a Discrepancy of six hundred and eight thousand Pounds?

The dispute is upon the Progress and Writ of their few, who have been Partners of his Abuse, without being Sufferers by his Crime. But Fear of the Commons (not Justice against the great Order, not only to the Commons of the particular Discrepancy, but the Assurances of the Law of Nature, whom the Earl had endeavoured to give off from the said Abuse, which ought to be deriv'd to them from the Power of his English.

The Commons having now maintain'd the Truth and Justice of the Charge against the Earl himself upon their Article, leave him to your Lordships' Discretion.



## MR. LUTWYCHE.

MR. LUTWYCHE. I am understood to affirm in the Reply; and since I was obliged to bear my share in this Prosecution, I was willing it should be such as would give me an Opportunity of hearing what would be said and proved in the *impeached Lord's Defence*, before I spoke freely upon the matters in Judgment upon your Lordships.

And I may now venture to say, as he was unfortunate to bring for heavy a Charge upon himself, he has still been more unfortunate in his Defence. I submit it to your Lordships' Observations, whether any Part of the Evidence offered by the Managers has not been examined, any, informed upon him, by his own Evidence, and some of the Charges upon him be has endeavoured to evade by such Excuses and Arguments, as have made even his Defence criminal.

My Lords, Upon the Examination of the first Witness produced on the part of the Commons, his Lordship was pleased to make it a Question, Whether he took the Oath directed by the Statute of 12 Richard II. The Objection seemed to be, that that Oath statute was *dead*, and his Lordship killed the Bible, yet he was sworn to nothing. This was so surprising to all that heard it, and the Report of it raised such indignation, that it might have been expected his Lordship would have drawn a Vind over his P. for the Oath, and have taken Care that it should not be misconstrued again; but instead of that, his Counsel, may he himself, have thought fit to bring this Point into Dispute in his Defence, and his Lordship does not even yet fully own that he took the Oath.

The Statute has been represented an obsolete, read in Old French, and not regarded, and the Oath not duly admitted; that the Officer laid nothing to his Lordship, as he was to the Officer.

The Witness told your Lordships, that at a meeting of the Great Officers every Year in the Exchequer, this Statute was read, and they immediately killed the Book; and that this was the usual method of taking the Oath prescribed by that Statute.

My Lords, I would observe, that if there had been any thing in the taking of the Oath that his Lordship thought not regular, it was his Duty, who was the Chief of that Assembly, to put them in a right method agreeable to the Statute: And therefore this Objection is very extraordinary to come from him.

It is a dangerous Practice for any one to make a show of taking an Oath, and yet, by some new Distinctions, endeavour to persuade himself or others that he is not sworn.

I do not know but most of the Old Oaths that are taken, say by the like Arguments be evaded, as well as this; the very Oath of Office before the Lord's Affairs is, *You shall swear, that you will be true to the King's Majesty*, as well as to the King's Majesty, and that there are no Words *ad preteritum*, whereby he is sworn. But where is the Defect in administering that Oath? The Officer reads out of the Statute, That the Chancellor, Treasurer, &c. shall be sworn, and then they kiss the Book.

I do not see there is much Difference between saying, The Chancellor, Treasurer, &c. shall be sworn (being at the same time present) and saying, *You the Chancellor, Treasurer, &c. shall swear*.

I shall therefore have the Charity for the Noble Lord to think and take it for granted, that he was sworn in the Senate required, and that he understood the Statute, that he was sworn in Old French, and that he did not provisions, when he did this solemn Act.

Supposing therefore that the Statute 12 R. II. is in Force, and that the Oath was duly taken; the next Consideration is, what the Law is upon the several Facts and Circumstances proved against the impeached Lord in relation to his falling the Office of Masters in Chancery.

The Answer put into the Charge of the Commons says, The Masters findy and voluntarily first a Prefect without admitting any particular Sum; we say that particular Sums (and their very vouchers) were issued out, and a Bargain driven for the Office, as much as could be in any Case by way of Brokerage; say, the very Benefit of having the Statute Money comes into the Consideration of the Price.

The Words of this Case above others, because the Office of Masters in Chancery do not only concern the Administration of Justice, but also, in those respects judicial; they transfer a part of the Business of the Court, and have usually been in Commission together with the Masters of the Rolls, and the Judges, for hearing of Causes.

Lord Chief Justice Coke in his Third Institute, p. 125. places this Office of selling Offices under his Chapter of Bribery, where he says the Definition of Bribery to be, *When any Man in a judicial Place takes any Fee or Reward, Rate or Salary, Gift, Reward, or Bribery of any Person that look to it before any way, for doing his Office, &c.* He comments upon the Words of this Definition, and more particularly upon these Words, *of any Person that look to it before any way*, and he takes Notice, that it is not confined to taking Money, where a Suit is depending; but also where any at a judicial Place does any thing for Gift or Reward by Virtue or Colour of his Office, that there be no Suit at all depending.

For Example, (says he), *If the Lord Treasurer, for any Gift or Bribery shall make any Exchange, Concession, or any Office or Ministry of the King, this is Bribery: For he ought to take nothing in that Case by the Statute of 12 R. II.* This Example also proves, that the Statute is not confined to the Commission that has been endeavoured to be put upon it, that it thence, only to Cases, where the Chancellor, Treasurer, &c. were together, as they do, when they nominate Persons for Sheriffs for the Example is of the Lord Treasurer alone.

But, My Lords, we shall upon it that this, as well as other Statutes (that have been mentioned) are but Declarations, and further Remedies for what was the Common Law. The Case that was cited out of *Adm's Reports*, 88. takes it to be so, of a Sheriff selling the Office of Caster, and his Bailiwick; but there was an Objection made to the Report of that Case, that it says the Statute, 4 H. IV. c. 5. gives a Penalty certain and pecuniary, whereas that Statute gives no certain Penalty, and therefore it might be a right Declaration upon that Statute. But the Declaration of the Court, upon which the Party was fined, was because the Office

was taken in 4; and that that Statute of 4 H. IV. gave no Penalty, yet I think the Statute 23 H. VI. c. 10. does give a Penalty of 40 l. in the fine Case of a Sheriff, and yet the Party was fined in the Declaration of the Court. The fine Case is also reported in the 1<sup>st</sup> part, where he takes no Notice of any Penalty, and the Report is in the same Words: "N. was Sheriff of Nottingham, 43 Edw. and took Money of the Officers of Caster and Bailiwick, and no left gave them no Satisfaction, who sold them, but he himself had the Money." And so it was found for that, for it is contrary to 4 H. IV. c. 5. And this is the Court, That that is a Corruption, and a great Abuse of Office in the Officers, and such Sale of Office is *malum in se*, and fustic.

My Lords, I think the impeached Lord has advanced a very dangerous Position upon this Point. He is pleased to say, the Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be so, the Publick is not hurt, though he gives the Chancellor Money for his Place. Here I presume he was sensible that it might be objected, that the same Argument would hold for taking Money in a Cause before him, provided it was a good Judgment: And therefore was pleased to say, that the Difference between this Case and taking a Bribe for Judgment in a Cause is, That in the one Case the Party has a Right to have Judgment, but in the other Case no man has a Right to his Favour or Recommendation, unless upon Terms. This is very extraordinary, and the same Argument would prove, that it is lawful for him to take Money for his every Judgment that comes into *Windsor-Hall* it is well known, that the Chancellor is not to receive any Money in that Case, and yet it might there be said, What is the Publick the worse, provided he is a good Judge? Surely this is such a Doctrine, as is not fit to be proclaimed to the World, as would tend to universal Corruption.

My Lords, There was a very extraordinary Precedent cited out of *Madox's History of the Exchequer*, p. 43. where he says, in the Reign of King Stephen, G. gave the Chancellor, fined in 2000 l. 12 s. 4 d. for the King's Seal. This the Author understands to be a fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. The Author himself observes, that this Precedent may still learn from us as to the Day. And truly it may, for, in the Indenture before your Lordships, entitled of paying Money to the Crown for the Office, here are very great Sums of Money paid by the Crown for an A. capote of it.

But what does this Precedent send us? Is it to prove the Office of Chancellor likewise salable? This is to ensure now, that it wants a better Authority than this Precedent. It is a great while ago, if it were as the Author takes it to be. But the same Author, p. 43. says, That the Ancient Baronage lay little concerning the Duty of Chancellor, or the Nature of his Office; and it does not appear what the Business of his Office was at that time, and nothing pertinent to the matter before your Lordships is to be collected from it. It is very strange to suppose the Common Law, that is founded upon Reason, should admit the highest Place of Jurisdiction to be filled by those that come in by such corrupt methods. And therefore we must be loath to insist, that it was an Office at Common Law, as well as by the Statute.

But suppose this matter settled only upon the Statute of Edward VI. I do not see but it is an Office and Misdemeanor in his Office of Chancellor to sell these Places of Masters in Chancery, and that he is answerable for it before your Lordships as a Crime.

This Statute is made against buying and selling of Offices (for that is the Title of the Statute). And therefore it is not an Office cognizable before your Lordships, for a Chancellor is not an Officer in a manner that is condemned by Act of Parliament? When he by Virtue of the Office is to appoint, it is a Branch of his Oath of Office to appoint contrary to the Laws and Statutes of the Kingdom, but more especially when he does it for corrupt Gain.

As to this Point, there is a great deal of Difference between one Officer selling to another, and a Judge that presides in the Court, whose Duty it is to set that proper Persons be appointed according to Law; judicial Office, by this method he shows them a bad Example on their very Admission into the Office, and introduces them by Corruption in the first Instance, even by the very Act of Admitting the Clerk to them.

If this Great Officer should be liable to no other Qualifications, than an Incapacity of Nominating again to the same Office, the Act would have little Effect, and that Penalty would signify very little; direct his own Office is during Pleasure.

My Lords, I shall now proceed to reply to the Defence that has been made on the Thirteenth and all the subsequent Articles, which is the Province more particularly assigned to me.

The Charge in the Thirteenth Article is, That upon the Failure of *Dunm*, instead of taking proper Steps for obtaining a substitution by regular and judicious methods, the Earl proceeded in a manner that was declared these methods, and by many indirect Practices endeavoured to control the true State and Consensus of the Office; left a publick Discovery of the Delinquency, should lessen the unjust Gain he proposed to make, by the Sale of the Offices of Masters in Chancery.

Upon this Article the impeached Lord has said, he thinks at hand that these Misdemeanors should be charged upon him; that this Affair about *Dunm* was a Misdemeanor that might have happened in any other Chancellor's Time, and not his Fault.

My Lords, If this unfortunate Lord had done what became him in his high Station upon the Failure of this Matter, God forbid that the misfortune upon the Office should any way have been laid to his Charge; if he had been defenceless, to have proceeded in a regular method, he might very easily have done so, the Parts of Virtue and Justice would have been easily, he need not have found himself at the End of Four Years surrounded with such insupportable Difficulties.

If a false, plain, and open record had been taken for enquiring into, and setting the Debt due to the Surint, and the Account of *Dunm's* Effects to satisfy it, there could have been no Danger to the Chancellor, whatever the Delinquency had been; but the Truth was, he could not part with these vast and enormous Prizes, for which he had at that Time raised the Places of Masters, he found the sweetest of that Game, and was willing to run some hazard for it.



Though it was known that *Dormer* was gone, yet the *Shewbill* of the Deficiency was not known; and if it had been publick, the money might probably have been taken out of the *Master's* Hands; a parliamentary Enquiry might have ensued, and he might have left the excellent Profits, which he afterwards actually made of those Places; and there were the true Reasons of the Concealment, and of the clandestine Proceeding that followed; nothing else hindered him from proceeding with Safety to himself by regular Orders of the Court. When Orders of Court are regularly made, there is a quick Way of putting them in Execution: It has been observed by the Counsel in this Case, that it is more expeditious against an Officer of the Court than another, and it is certainly so. There might have been a Sequestration against *Dormer* in a very little Time, and that would have entailed the Court to the Possession of his Effects for the Benefit of the Sumers; which was a great measure against what was objected of the Necessity of *Dormer's* coming over, and having his Liberty in order to transfer his stock. It was likewise said, that it was necessary for the Discovery of his Effects; and yet when he did come over, he was never examined on Interrogatories. Surely, if a Chancellor will take upon him to grant a man his Liberty, when he is to make Satisfaction to the Sumers, he ought to take care that the Consideration for the granting him his Liberty should be performed.

But it is said, What Harm has happened by not taking those methods? My Lords, Here are two remarkable Influences of the Consequences of this Neglect, by which it appears neither the Debt to the Sumers was known, nor the Quantity of the Effects that there were to pay it.

Mr. *Edwards* told your Lordships, That the Deficiency of *Dormer* was at first about 25,000 l. but that about a month ago he discovered a further Debt of about 15000 l. Here there is a very great Deficiency concealed: On the other Side, the Effects of Mr. *Dormer*, that should have gone to wards paying this Debt, have been concealed and hid by the want of such an Examination. Your Lordships heard the Evidence about the Parcels of Hops belonging to *Dormer*, that were worth over eight hundred Pounds, that lay concealed four Years, and were not discovered till lately. The Counsel, indeed, said, They were only a Parcel of muddy Hops that had been sound. But if he had been examined on Interrogatories, in all Probability he would have discovered them at first, and they had been worth 5 or 6000 l. more than now, and the Sumers would have had the Benefit of them, 5 or 6000 l. is a considerable Sum in Mr. *Dormer's* Effects; and no one can tell but there might be other Influences of the like Kind.

What is the Answer to Lordships gives to this profit and willful Neglect? He tells your Lordships, That he is not Doubtless in the two former Matters, to make Enquiry into *Dormer's* Affairs and Accounts; he left it to them, and that they did not think it requisite to examine him upon Interrogatories, or to use him with Harshness.

It is very extraordinary, that in a matter of this great Concern, he should content himself with a parol Direction, Orders from a Lord Chancellor, that are in Earnest, are always in Writing; nor can they be enforced unless they are so; and therefore there must be some private Reasons for their extraordinary Proceedings.

Another Thing that was said on, was, That the Earl (as he expresses it in his Answer) was made to believe, that the Matters would not go to the Deficiency. What Reason had he to believe it? They never told him so, in a matter of this moment, he had no reason to depend on an Hour-day Evidence. He knew this was to be an Undersailing for the Debt of another, which could not by Law be obligatory, unless reduced into Writing.

My Lords, I cannot account for these Things, either as the Chancellor, or those Matters that had the management of this Affair, unless it be (as the Article charges) to conceal the Deficiency of the Office, I mean the Quantity of this Deficiency; and that both the Chancellor and the two senior Masters thought it their Interest to do so, that all of them might share in the Sale of the Places. The two former Matters were detected, as was mentioned by the Evidence; to tell out, and the Chancellor was ready to receive his Share of the money.

The Fourteenth Article is the Article about the Compulsion with *Widdow*; I must beg Leave to say, notwithstanding what has been insinuated upon, That it is a clandestine, unusual, and unreasonable Proceeding. We did take the Liberty on our Evidence to this Article to observe to your Lordships, that the Petition of Mr. *Edwards* (in which this Compulsion is founded) taken Notice that *Dormer* was indebted to the Sumers of the Court in several considerable Sums of money, which should have been a Caution to your Lordships to have taken a more than ordinary Care in the matter; but instead of this, there is not any one Order, Affidavit, Report, or any one Proceeding, that appears upon Record throughout this whole Affair.

The Report produced appeared to be the Original under Mr. *Heard's* Hands, which was a Demonstration that it was not filed at the Time when the Ord. was made for establishing this Compulsion, nor has been since.

My Lords, If there be but an Affidavit sworn to a Petition, care is usually taken in order that a Bill be filed; but it was not thought convenient in this Case to have any thing publick.

My Lords, The Earl of *Macclesfield*, in his Defence to this Article, began with a Copy of a Judgment obtained by *Widdow* against *Prother*, that was signed 22d November, 1721, and is in 18.7.74. whereas the Debt pretended to be assigned by *Widdow* was 12,000 l. so that though the Judgment was for 18 that *Widdow* could pretend to be above 12,000 l. more than what the Judgment is for; which is a further Objection to this Compulsion that will not appear before.

The next Point the Earl examined to, was the Sufficiency of *Prother*, in order to prove the Assignment of *Prother's* Debt to be valuable; and there were two or three things produced in this Account.

They were very unimproving Warrants to prove the Man's Ability, for they happened to be in the very Papers to whom he had declared his bankruptcy; one of these (*Widdow*) was employed to go to Mr. *Widdow* to compound with him.

But then a very sensible *Dormer* was sent to the Earl himself, to show though *Prother* deflected to some Warrants that he was highly indebted, and that they were not upon the Point, yet all other People took him for a good man. The Evidence produced to prove true, was only saying that he knew he was insolvent, and not one of all those others that it is fit to take him to be solvent.

But we hope we have made it plain (and if it were necessary, we could make it clear beyond Dispute) that *Prother* was a broken man at that Time.

Another Objection was, How does it appear that a better Composition could have been made?

My Lords, These that pretend to take upon them, without a lawful Authority, to make a Composition to bind the Parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this Case on the Examination of Mr. *Edwards*, that *Widdow* (whom he was afterwards charged with) said he had paid several others their full Debts; and 'twas curious that he kept his Book open till lately.

My Lords, The Answer to our Objections, That no Notice was given to the Sumers of this Reliance about the Composition, carried in it (I thought) something extraordinary. It was said such by the Earl of *Macclesfield* and his Counsel, that whatever the Lord Chancellor did, could not bind the Sumers, they not having Notice, and therefore the Sumers might recover the whole from *Widdow*, and nobody was hurt.

My Lords, There is something very shocking in this Excuse, it strikes some Horror to think, that this poor ignorant man (*Widdow*) should be made to believe upon the faith of a Court of Justice, that his Composition was in full Discharge of his Debt; if there was at the same time a Release that it might be for use for want of Notice to the Sumers, the Excuse seems to carry in it a greater Guilt than the Crime charged. This unfortunate man (*Widdow*) was living at the Beginning of this Trial, but has since died violent Deaths on his bed, and he is dead: I make no Reflection what might be the Occasion of it.

My Lords, I did mention that upon the absolute Order made for Mr. *Edwards* accepting this Composition, it was ordered to be accepted, with this Addition to the Order, *Of which give Notice forthwith*. I mentioned it, that the Earl might have explained what he meant by this Notice, Notice after the Composition was ordered to be accepted, or to waive Notice was intended to be given; I have heard no Answer to this, but when the Earl was pleased to lay about the Articles, that on reading them, he thought he had been charged with compelling Mr. *Edwards* to accept of a Composition without Notice to him; whereas it was done on the Petition of *Edwards*. My Lords, the Notice should have been given to the Sumers, and that before the Composition was ordered to be accepted; and what the Article charges, and what the Managers infer out, and the Answer is gross to that Objection.

It was said, That if it had been first down to be heard in the ordinary Courts (it being the Third of August) in Vacation Time, it could not have come on till the next Term.

I believe that Lord knows it had very often happened, that particular Petitions have been heard in Vacation Time, it Nicely required it, and I don't understand why then intended to be such a Favouritism for having the Court to sit in haste, unless it were for the Purposes charged in the Articles. There was likewise touching (aid by the Earl, of the driving out of the Paper of Indemnification, that if it were judicious, it needed no Order to indemnify; and if it were not judicious, it might not to be in, but what we say is, that it looks like a Difference whether it was judicious or not, and first it was put into the Paper of the Petition, that Mr. *Edwards* might be indemnified, if the Chancellor thought it not judicious, he ought to have let Mr. *Edwards* know it, as much as he ought to have let Mr. *Widdow* know, that his Composition would not be good without the Sumers being Parties. As there is no reasonable Account given for such an extraordinary Proceeding, we fight with your Lordships, whether it is not rightly charged to be done for the unlawful Purposes mentioned in the Articles. If a Composition of Bankruptcy had been taken out against *Widdow*, the Quantity of the Debt in *Dormer*, and consequently of the Loss of the Sumers, must have been known, and other Sumers might have been alarmed, and a thorough Reformation might have happened, which might have ended in the taking away the money from the Masters, and the Price of the Places would have been lowered, which was always most carefully avoided.

My Lords, I now proceed to reply to the Defence made on the Fifth, Sixth, Seventh, and Twentieth Articles.

The Twelfth Article is, That after the Failure of *Dormer*, the Earl of *Macclesfield*, in order to carry on his corrupt and unjust Purposes, and to conceal the Deficiency, did call for the Accounts of the Masters, not with any Intent of examining them, or to secure their Effects, but to terrify the Masters, and oblige them to contribute 500 l. a piece; and after that Purport was served, did not oblige them so using in their Accounts.

The Sixteenth is, That he persuaded the Masters to pay the 500 l. ordered to Mr. *Clay* for the like Purport.

And the Seventeenth is, For letting all the money belonging to *Dormer* be paid away to some of the Sumers, without obtaining a Composition, so which all was equally entitled.

To the Fifteenth, the Earl of *Macclesfield* says in his Answer, That he did really call for the Accounts with an Intent to examine them, and that he might regulate matters, and after the 500 l. was paid, still he called for the Accounts; for that there was a Letter sent in November 1721, to the Masters, insinuating upon having them; but as to this second Letter, as Mr. *Comyngham* did not speak at all positively to it, but that he believed, he could not be positive that it was sent, and it is but a distant recollection of it, &c. we must beg Leave to acquaint your Lordships, that this second Letter was never sent, and every one of the Masters will give your Lordships this Account. But supposing it had been sent, can any one imagine that the Chancellor would not have perceived that Direction, and have had their Accounts, if he had really intended it? What is the Excuse still? He had regard to many Particulars in the Accounts, that it was almost impracticable to do it. My

Lords,



Lords, if the Charge in the Articles be true, it answered the Design, the which, that it should be difficult to get, it was done to get from the House good a piece to quit Matters in the present, and what that was, there was no more Life made in the Order. But when it was made, it was of all, that, in the four Years, Time it was to be difficult a Work, it could not be done, yet, when it came to the Council had call upon the Accomps, the Earl of Macclesfield such Diligence, that he secured them to be ready in a Week's Time; and that all the Disputes and Particulars which he had required, were not observed, yet it was they were all that were necessary and sufficient, and it was hoped that as would prevent a Parliamentary Enquiry.

The Earl in his Answer values himself much upon this Expedition, not considering how sufficient it was with the Difficulties which were made as to have for me having a done Four Years before.

It was insisted on, upon this Head, that Mr. Lightfoot did not pay, and yet he brought in no Account; but however, Nine of the Masters did pay, and the Chancellor will know it would have looked very partial had he paid against one single Master, and not the rest; that would be a bad Example, and Mr. Lightfoot escaped too; besides there was not a Third of your sum of him, for he was several Times afterwards obliged to about making good his 50-*l*.

It was said likewise, the Benefits of the Court must have been at a stand, if such Accomps had been paid.

My Lord, if it had been so, it had been more for the Reputation of the Court, and for the Benefit of the Sectors in general, to have had some Time rest in it about this necessary Work, and if there had been a willing Mind, for long Vacations would have been sufficient without any Interruption to the Business of the Court.

It was said, that if the Earl is pleased to say, if he had taken the Accomps, it would have been paid nothing what he went farther.

My Lords, if he never began, he could never bring anything to Perfection; and in his Answer he confesses it was necessary to have the Accomps in order to make Regulations. But after all he is forced to come to this Conclusion (as he says in his Answer) is to say in the same Words his Predecessors had done it, by the way, it has appeared to your Lordships, that it is not the same Road, for his two immediate Predecessors did call for the Accomps, and he has not.

The sixteenth Article is grounded on the Petitions to pay 100*l*. (ordered in Mrs. Gwyn) to prevent a Parliamentary or public Enquiry, and that the Earl afterwards paid the same himself to Mr. Lightfoot, &c.

My Lords, we called Six or Seven Witnesses to this Article, and did observe at that Time the Earl in his Answer said, he believed he did not persuade the Masters to pay this 100*l*. And his Lordship was pleased to say, when he spoke in his Defence, That he still believed, that he did not persuade them to pay it.

My Lords, it is very strange that there should be any Doubt made of it; the Occasion of the Meeting, and the Nature of the Thing plainly shew it.

First Mr. Cunningham was to Mr. Lightfoot, and told him, that there was a perfect Occasion for this 100*l*, that it was proposed he should pay the 100*l* (which he should have paid before) and the other Masters go to sleep, which would make up the 100*l*. When the Masters were going to the Lord Chancellor's, they discussed among themselves, that they were going upon Occasion of another Call for Money.

When the Chancellor came to them, he mentioned the pressing Necessity, and he was for paying this 100*l*.

Mr. Edwards partly says, that he represented to them this Matter of 100*l*. as a thing of Consequence, every proper Division of a Sum of Money necessarily is paid, he said, I do not know what the Consequence may be, I cannot say it is a good thing, I do not know that it may come in a Parliamentary Enquiry. Mr. Lightfoot says, that my Lord told them, This was a Matter that required great Expedition, for we that belonged to the Prince's Court, and all of them understood there was a Proposal to pay the 100*l*. and that was the Occasion of the Meeting. All the Masters that have been mentioned on this Head confirm it.

What is it that is to evade all this Evidence? It is only this poor Shift, I did not (says the Noble Lord) persuade them to pay the 100*l*. but I persuaded them to pay all *Dormer's* Deficiency.

My Lords, there is no Evidence to support this Diffidance, but, on the contrary, there were Arguments used for the advancing of this Money. And if he was not able to persuade them to pay this 100*l*, there was no Likelihood of prevailing on them to pay the whole.

My Lords, another Master insisted on in Relation to this Article was, that the Money which was paid to *Lassons*, was paid out of Compassion; *Lassons* says he took it as his due, and I think he was in the right; he gave an Assignment of the Order, when it was paid, and certainly this can in no Sort be added to the List of this Noble Lord's Charities, that he has been pleased to publish; but the Difficulty with the Masters before shews plainly what were his Inducements for paying it, he feared the Consequence if it were not paid, and chose rather to do it, than venture that Enquiry that the not paying it might occasion.

I think the Earl seems to agree, in Substance, to the Declaration at the End of the Articles, that was made the Fifth of December last, viz. that he had heard of *Dormer's* Deficiency, and knew nothing of it at it was published *Newsp.* &c. A strange Declaration to come from the Mouth at the End of Four Years, during which Time were all these Transactions about *Dormer's* Deficiency! Then it was that he was pleased to refer to Mr. Edwards, to enquire whether there was likely to be a Loss of any Money, when at that Time he knew very well that all *Dormer's* Money was gone, and Mr. Edwards had more in his Hands.

The seventeenth Article is for ordering and permitting *Dormer's* Money to be paid out without Regard to Proportion; this was a manifest Injustice, and is discovered between this Lord himself and Mr. Edwards; and the Answer that is given to us, by this that we have produced but Four Orders made by the impeached Lord for such Payments.

My Lords, I think it not material whether the Orders were made by himself, or the Court, he was warned several Times of the Consequence;

he took the Management of these Matters to himself, and let Things run on, hoping the Money would last his Time; and now all is gone, and paid away, and many distressed People are left without any thing. In the Case of *Jett* and *Jesse*, the Orders that were made, appeared to be made by this Lord himself; and the Parties have been so lucky as to have got their whole Money, whilst others are in the utmost Necessity without any Satisfaction.

The Consequence is, that the rest of the Sectors, who were intitled to an equal Proportion, have no Remedy for it. What may be done for them in Charity and Compassion is of another Consideration, but their legal Right is taken away by him that should have protected them.

An Objection was made by the Counsel, that there was no fixed Fund of *Dormer's* Effects, from which to have levied a Rule of Proportion. This is exceeding one Fault by another: First, Care is taken not to have an Account settled; and then that is made an Excuse for not settling a Proportion.

The eighteenth Article relates to the Masters Trafficking with the Money; which was as notorious, as that there was such a Place as *Exchequer-Alley*.

The Year 1730 has been mentioned both by the Earl and his Counsel, and it was to be fatal a Year, that surely, if a Reformation were ever to be made, it should have been upon that Occasion. I think there is but little Difference, whether they traded with the Money themselves, or put it into another's Hands at high Interest, and permitted them to trade with it. Could any one imagine that *Dormer* left 20,000*l*. in *Wife's* Hands for nothing? My Lord, upon the Examination of my Lord's own Counsel, gave Evidence, that *Wife* might be allowed high Interest for it. And it was well known it was in the Power of all the others to traffic with the Money, and also after express Warning by one of the Masters to the Chancellor not only by Word of Mouth, but by Letter written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection: one Thing that was proposed was so easy to be done, that there was no Excuse it was not complied with, which is in Relation to the Securities, by placing them in two or three Names, which would have prevented the Masters from disposing of the Securities.

This might very easily have been done. The only Answer that was given, that it would not answer all the Securities.

This was made a Reason for doing of nothing, and there was such a Backwardness to do any thing of this Kind, that the meanest and most trifling Excuse was sufficient to satisfy his Lordship, not to take any Step towards it.

My Lords, upon this Article the impeached Lord was pleased to mention some of his Predecessors, and also his Successors: As to his two immediate Predecessors, he doubts the taking the Accomps by him in the manner they did, would have been thought of so late.

My Lords, I am apt to believe a good Use might have been made of it; it would have been more certain, when they might have been made of it; they would have added with more Caution, when they might have been made of it; upon them, and that it might be called for at any Time; and if his Lordship had those Accomps, I dare say he would have seen that there was no Times as much Cash in the Masters Disposal, as there was in one of those Predecessors Time. And it might have been of Use to him to have seen what prodigious Sums of Money were in their Hands, and how great the Danger was.

As to the present Commissioners, the Noble Lord was pleased to say, the Difficulties of making the Masters Accomps have appeared by their Proceedings.

My Lords, they have been sufficiently taken up with endeavouring to compel the Masters to give Security for the Deficiency occurred in this Lord's Time. The Difficulty was not so much in taking an Accomps, as in making good the Deficiency.

They have been forced to take what Security they could get from the Masters from Time to Time, and I with the Difficulty do not still come out worse than is expected; y<sup>e</sup> no one can yet say what it will be.

My Lords, the Nineteenth Article was founded on the Endeavours of the Lord impeached, to decrease His Majesty's Council, by persuading the Masters to make false Representations of their Circumstances to His Majesty, by a Substitution to their Accomps, and by assisting one another to make an Appearance of Ability.

Thus, my Lords, was the sad Conclusion of this long Scene of Iniquity, when it was become necessary, and it was no longer to be avoided, that there should be Accomps delivered in. There is an Attendance on the Chancellor; and one of the Masters having concluded his Accomps with a Representation of his Ability and Readiness to pay the Money, the rest are persuaded to do it in the like Manner, without so much as asking them concerning the Truth of it; and there is one Instance that was very remarkable, which was in the Case of Mr. *Leachman*, that where he, of his own Accord, could go no farther than to say he was able to pay or give Security to pay; that was no thought sufficient by the Lord, because it would imply a Satisfaction that the Money was not then forth coming; and therefore that Words about security, were not to be trusted.

Others of them that were no ways capable of producing the Money, were induced to make the like suffer piteas.

When it was expected the Money should be produced, then Mr. *Dormer* and Mr. *Cunningham* have a Meeting with the Masters to consult what was to be done, then it was that Proposals were made for the Masters to assist each other, and to get Goldsmiths Notes and other Effects to flow to the Judges.

It has been objected, that the Managers did not think fit to call Mr. *Cunningham* and Mr. *Dormer*.

My Lords, we called the Masters that were present at that Meeting, who gave Your Lordships an Account of that Transaction, and it turns the Objection upon the impeached Lord, that he did not think fit to call Mr. *Cunningham* and Mr. *Dormer* (that were his Secretaries and Agents) to consider that Evidence; if this Lord had no Concern in that Matter, he would certainly have called them to that Purpose, and his not examining them to it, greatly confirms our Evidence.

Your



Your Lordships may remember the many Inconveniences, Evasions, Elopements, and Inaffluences in his Lordship's Answer to the Articles of Impeachment, which have been observed and plainly made out by the Managers for the Commons.

My Lord, He was pleased to make a Diffinition between an Answer to Articles of Impeachment, and an Answer to a Bill in Chancery, &c. &c. the Plaintiff in a Cause had a Right to a full and plain Discovery, but that the Case before Your Lordships differs. My Lords, I would beg leave to mention, that there was an Instance of an Impeachment before Your Lordships, in which the Lord now impeached had a great Share in the Reply, whereas he had very great Stock upon the Impeachment, and Evidence in the Answer. The Person then impeached had very hard Names given to him on that Account, and even his Estate was seized on as a *Creditor of his Graces*.

As to the Noble Lord's Charity, I beg leave to say, that, as it is a great Addition to the merit of Charity, to have it kept private, it was the more extraordinary these Charities should be now published, because I do not see they are any ways material to the Matters before Your Lordships. Here are plain Facts charged and proved, and if in a Case of this Kind these Charities are to wipe off the Charge, it is a Kind of Commutation that has not been heard of. My Lords, he that would be himself notoriously charitable, should seek to justify. The Lord should have first contended that he had injured; he should first have made Satisfaction to them, and that have offered his Gifts.

Thus we have endeavoured to lay before your Lordships the whole Circumstances of this Case. There needs no Eloquence to aggravate the Crimes; I pretend to none; but the Crimes of Widows and Orphans will have the most persuasive Eloquence, and when they have Justice on their Side, they will have Weight with Your Lordships.

My Lords, The Case before Your Lordships is founded on Corruption, and a Series of Frauds to support that Corruption. The People had long murmured at it, but the Grievance increased as fast as such an insupportable Degree, that it became a National Concern, and there was an unavoidable Necessity of a Parliamentary Prosecution.

My Lords, The Commons hope they have done their Duty in bringing it here, and we hope your Lordships will give such Judgment as will be consistent with your Lordships Honour and Justice.

Mr. Serj. Popham. My Lords, we shall beg leave to call a Witness or two; the first to the Imputation endeavoured to be thrown upon Mr. Thomas Burrell's Character, in relation to the Discourse that passed between him and the Earl. We shall show that he declared it at that very Time, or soon after the Lord had spoke to him. We desire also to examine Mr. Lucas, who applied for the Master's Place. It was said, that the Earl was offered 6000*l.* and actually refused to take it; but took 5000*l.* from Mr. Eldon and Mr. Trenchard for the Master's Office: We shall show how that happened.

(Mr. Richard Lucas sworn.)

Mr. Serj. Popham. We desire that you would inform my Lords, whether you made any Application to the Earl of Macclesfield, or to Mr. Catherine, about coming into the Masters Office at the Time when Mr. Eldon or Mr. Trenchard were admitted, and what passed?

Mr. Richard Lucas. My Lords, upon the Death of Mr. Fellows, being persuaded by some Friends to make an Application for the Office vacant by his Death, I did go immediately to Mr. Gunningham, my Lord Macclesfield being then out of Town, I thought it proper to go to his Secretary.

Lord Chief Justice King. Please to speak up.

Mr. Richard Lucas. Sir, upon the Death of Mr. Fellows, I was persuaded by some Friends to make Application for the Master's Place; and upon that, I went to Mr. Gunningham, and told him the Affairs I came about. He told me, Mr. Lucas, you know you have formerly had some Talk with me about an Affair of this Nature; it is so as Purpose for me to recommend you to my Lord, unless you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6000*l.* There was some Talk passed between us besides, but it being so long ago, and not expecting to be called to give an Account of it, I cannot now recollect it. One Thing I can recollect that he intimated to me, That my Lord Macclesfield had some Intimations of making some Orders, or doing somewhat that should be for the Ease or Advantage of the Masters, but his Lordship would not do it that Time, because it would look as if he had an Intention of making Advantage of that Vacancy. A Day or two afterwards I met Mr. Gunningham in the Hall, and asked him, if he had spoke to my Lord about it? He told me he had; but that my Lord was pleased to answer him in the Circumstances, and did think it proper that some Security should be given by the Masters, and I being immediately to be put in by his Lordship, it was the more incumbent upon him to let what Security I was able to give. Upon that I waited upon him to know what Security was expected: He mentioned to me 10,000*l.* Security. I told him, that after such Time as I had parted with 5000*l.* I could not take upon me to say, I could my self make up a Security to the Value of 10,000*l.* but what with the Assistance of Friends, and mine own Estate, I might possibly do it. Upon talking of the Matter with my Mother, she was very willing to join in the Security. Upon that I wrote a Letter, I cannot remember whether it was directed to my Lord Macclesfield, or to his Secretary; but to one or the other it was. I sent it by my Secretary, and I was informed by Mr. Gunningham, That his Lordship had a Sight of it. But afterwards being uneasy at giving to large a Sum of Money, and considering from the Talk that was then that these Masters might come into Parliament, I was advised, and I thought it proper, to have some Letters held upon his Lordship, to make some Return, in Case any thing should happen to lessen the Value of the Place: Upon that, I did write a Letter, I cannot remember the whole Contents, but I pretty well remember the Substance, which was, That I would undertake to give the Security required to the amount of

10,000*l.* I believe, I did also mention my real Estate, which was near 1000*l.* a Year, to be part of the Security, and I did also, That notwithstanding the present Dispute between the Master of the Rolls and the other Masters, and the talk there was of bringing it into Parliament, I was not at all uneasy, because I could securely depend upon his Lordship's Generosity, that he would take it into his Consideration, in Case any thing happened again in the next Session of Parliament, I can't remember exactly the Words, but my Lord Macclesfield has the Letter; if I am mistaken, his Lordship will let me right.

Mr. Serj. Popham. Upon this Letter of your Expedition of being required, if any thing happened, had you any Answer?

Mr. R. Lucas. The next thing I heard, was, That Mr. Eldon was in the Place, and Mr. Gunningham was pleased to say, he was a particular Acquaintance of my Lord's, and therefore had it.

Mr. Serj. Popham. When Mr. Gunningham told you this, what Answer did he return as to your Lord's Application of the Proposal?

Mr. R. Lucas. He said, to the best of my Remembrance, That my Lord was pleased that I offered 6000*l.* at once, provided I would give Security, if that should be thought proper.

Mr. Serj. Popham. Since you were acquainted when Mr. Eldon came in, What said when Mr. Thynne came in? Whether did you renew your Application then?

Mr. R. Lucas. I was, with Abundance of Regret and Fear, prevailed upon to renew my Application.

Mr. Serj. Popham. What were your Fears?

Mr. R. Lucas. My Fear was about the bringing this Matter into Parliament, and that I did not know what Effect that might have upon the Profits of the Place. Upon that, my Brother told me, he was acquainted with Mr. Eldon, his Lordship's Chaplain, and, if I pleased, he would go to him, and get him to speak to my Lord about it.

Mr. Serj. Popham. What Directions did you give to your Brother as to offering any thing, and upon what Terms?

Mr. R. Lucas. I cannot say whether my Brother had a direct Commission from me to mention that I was then ready to give 6000*l.* but it was my Appointment, and the Approbation of all those that knew the Affairs, that I should not come in under so much, I am not very positive that such a Direction was given. I did mention another thing to my Brother, to acquaint Mr. Eldon, that I had heard more of the Deficiencies in the several Offices of the Masters, and that I was not without Apprehensions, that if I should give 6000*l.* to come into this Place, I might from time to time be called upon for several Sums of Money in order to make good such Deficiencies; and I thought that it would be unreasonable for me to be brought into any Contribution for making good those Deficiencies, when I had so Cousins in them. I then desired it might be mentioned. As for the Answer, I never saw Mr. Eldon.

Mr. Serj. Popham. What Orders did you give to your Brother? Did you give him any Order to pay the Money without Consideration of being liable to the Deficiencies?

Mr. R. Lucas. I gave him no Order at all, I thought it was not come to bear yet.

Mr. Serj. Popham. Was there any thing passed after that?

Mr. R. Lucas. I conceive, my Lords, you won't think it proper for me to give an Account of what passed between Mr. Eldon and my Brother.

Mr. Serj. Popham. I desire to know, whether your Brother had any Orders and Directions from you to go on?

Mr. R. Lucas. I have told you every thing I can recollect; I only told him, I desired him to speak to Mr. Eldon to recommend me to his Lordship, upon the Foot I have mentioned, &c. on the Foot of the former Proposals.

Mr. Serj. Popham. Had your Brother any Authority from you to give 6000*l.* without being secured from the Deficiencies?

Mr. R. Lucas. Six thousand Pounds was the Sum to be given, and I desired my Brother to recommend the Deficiencies, and that I should not be understood to be subject to any of them.

Mr. Serj. Popham. Was it to be given absolutely without Reserve, or with Regard to be secured from the Deficiencies?

Mr. R. Lucas. I did desire that the Business of the Deficiency might be explained, and that it might be understood that I would not be answerable for any of them.

(Mr. Edward Lucas sworn.)

Mr. Serj. Popham. I desire that you would inform my Lords, whether you received any, and what Directions from your Brother, upon the last Vacancy, when Mr. Thynne came in, of the making Proposals for your Brother's coming into that Office?

Mr. E. Lucas. Soon after Mr. Burrell's Death, my Brother expressed an Inclination to me of succeeding in that Office: I told him, I had an Acquaintance with Mr. Eldon, my Lord Macclesfield's Chaplain; and if he would give me any Commission, I would communicate it to Mr. Eldon.

I believing that a proper Way of communicating it to my Lord, My Brother did desire me to go to Mr. Eldon, and to inform him myself that he had just a Sum of 1000*l.* from his Lord's Honour and Generosity, that he believed he might have the Terms to be fixed by my Lord himself. I went to Mr. Eldon, and did tell him as my Brother had desired me. Mr. Eldon told, He did not much care to concern himself in the Affairs, if I had been to recommend to a Lay age, it might be proper for him; but this was out of his Province. I acquainted him with what Steps my Brother had formerly taken, in order to obtain one of these Offices, and explained to him the Nature of the thing, and persuaded him to lay this Matter before his Lordship. Upon which he was then pleased to say, He would go to my Lord (who was at Aspley) the next Day, and bring me to Mr. Eldon.

Mr. Serj. Popham. Had he any Directions either as to the Price, or the Terms?

Mr. E. Lucas. I don't know of any Directions he had, either as to the Price, or the Terms.



Mr. Serj. Pargely. What did you say about the Security, and the Deficiency in the several Offices?

Mr. E. Lucas. This was another Conversation, about a Week or two ago; after Mr. Ellis had brought me an Answer, then I remember Mr. Berne gave me Direction to consult with Mr. Ellis, whether it was proper to make my Lord a direct Offer of 6000*l*. but then it would be not think, that he should be indemnified or secured from any Damage, or Deficiency by any of the several Masters; and that he should not be obliged to make good any such Deficiency. I told Mr. Ellis thus, and to be sure there was no Reason for this, there might be Deficiencies in some of the Offices, but he had heard there was no Deficiency in Mr. Berne's Office. I had likewise heard so, but whether there was a Deficiency or not, I could not tell; my Brother was willing to enter into a Treaty with my Lord upon these Terms.

Mr. Serj. Pargely. Did you hear any Thing more about it?

Mr. E. Lucas. About a Week after Mr. Ellis went to me, That my Lord Mansfield had appeared of Mr. Thynne's.

Mr. Serj. Pargely. Præse to recollect, whether your Direction was about Berne's Deficiency only, or about all the Deficiencies in general?

Mr. E. Lucas. My Direction from my Brother was about all the Deficiencies; Berne's Deficiency ran in his Head, and he thought it unreasonable, that he should be obliged to contribute to any Deficiency precedent to his coming in Matter.

Mr. Serj. Pargely. Did you communicate this to Mr. Ellis?

Mr. E. Lucas. I did communicate it to Mr. Ellis; if not in such express Terms, yet so that Effect, that it was unnecessary that my Brother should be obliged to contribute to make up those Deficiencies that were precedent to his being Master; I am sure I added those Words, that he should not be obliged to contribute to make up those Deficiencies that were precedent to his being Master.

End of Mansfield's My Lords, I submit, whether it be not proper, that Mr. Ellis be called before this Mr. Lucas goes away.

(Mr. Ellis called, but not examined again immediately.)

E. of Mar. My Lords, I desire that you would declare to my Lord's over again, what you have given in Evidence.

Mr. E. Lucas. The first Time I saw Mr. Ellis was at my Mother's House, immediately after Mr. Berne's Death. I then told him of my Brother's intention to purchase a Master's Place, and that my Brother had in thorough a Seal of my Lord's Honour and Generosity, that he would leave the Terms to my Lord himself. Mr. Ellis was not at first inclinable to concern himself in it, but upon telling him what Steps my Brother had taken in regard to it, he laid out of Friendship to me, he would engage in it, and go to my Lord, and bring me an Answer. This was the first Conversation. Mr. Ellis did the next Day bring me an Answer from my Lord.

Mr. Serj. Pargely. What was the Answer my Lord sent?

Mr. E. Lucas. The Answer that Mr. Ellis brought was, that my Lord had no Objection to my Brother; he did remember, that he had been formerly recommended to him, but that there was some other Person proposed by some of the Masters, of whom he expected a further Recommendation, and could not now give any other Answer to it: He also told me, that he apprehended, if that Person did not succeed, my Brother might have the Refusal. I said, it was impossible whether my Brother then succeeded or not, he said my Lord told him. That out of two Masters were inclinable to sell, and if they did, he might have an Opportunity of buying of them Masters. This passed on the second Conversation.

Mr. Serj. Pargely. Go on.

Mr. E. Lucas. The third Conversation was some time afterwards at my Lord Mansfield's own House in Lincoln's-Inn-Fields. I went by my Brother's Direction, meaning to consult with Mr. Ellis in a friendly manner, whether he did think it advisable to make his Lordship a direct Offer of 6000*l*. I said, if he gave it, it was reasonable that he should be indemnified from any Damage that should happen by Reason of the Deficiency in any of the Offices, and not be obliged to contribute towards making them up; he said my Lord had not spoken to him about that, that he could not have every Opportunity he desired to speak with him; that as to the Deficiencies, he had heard there was none. I said, I had likewise heard so, but whether there was or no, my Brother was willing to enter into a Treaty with my Lord upon these Terms. This, to the best of my Remembrance, is the whole I know of the matter.

Mr. Serj. Pargely. I only would beg Leave to ask this Question, When the first Proposal was made to Mr. Ellis, whether he did propose a certain sum?

Mr. E. Lucas. I don't remember I did; but I think I told Mr. Ellis, my Brother had formerly offered 6000*l*. and I told Mr. Ellis this, and all I say before him all the Circumstances of that Affair, to make him the more inclinable to engage in it.

Mr. Serj. Pargely. I desire he may be asked, whether any Terms besides were mentioned, than what Mr. Lucas has mentioned before?

Mr. E. Lucas. I don't remember there were any other Directions then given, I can't be positive, but that he was willing to leave it to my Lord's Honour and Generosity. And, my Lords, I can swear positively, that till the first Day of their Proceedings, when I met Mr. Ellis in the Court of Requests, I never knew that he had offered my Lord Mansfield 6000*l*.

E. of Mar. My Lords, we beg Leave that Mr. Ellis may give an Account of what Proposal he made to me from Mr. Lucas.

Mr. Ellis. My Lords, the Account Mr. Lucas has given your Lordships, is true in all the Particulars, as far as I can remember at this Distance of Time, though there are a good many that I could not have recollect of myself, only as to this one, his not answering me to offer him 6000*l*. I should not have gone to my Lord, unless I had had some Particular Offer to mention. I particularly remember I made him that

Offer, and I am as certain, that Mr. Lucas did speak to me to make the Offer of 6000*l*. for this Reason, that I know that Mr. Lucas had offered 6000*l*. before by Mr. Canning, and that Impachment begun, when Mr. Lucas, being here, acquainted me, that he had made that Offer to my Lord.

Mr. E. Lucas. I desire Mr. Ellis may be asked, whether ever he told me, that he offered Lord Mansfield 6000*l*?

Mr. Ellis. I believe I only did tell him in general, that I had made his Lordship the Offer which he had desired me to make, and in general likewise, that my Lord was well satisfied with it.

Mr. Serj. Pargely. I desire he may inform your Lordships, whether, when he told Mr. Lucas, that he had made that Offer which he had desired him, he did enquire what that Offer was?

Mr. E. Lucas. No, my Lords, he did not.

Mr. Serj. Pargely. My Lords, they have called Mr. Ellis to confront Mr. Lucas; they have agreed together in all the material Circumstances. Mr. Ellis says, what Mr. Lucas swears is true in every Particular, unless in Relation to the Offer of 6000*l*. In all the rest Mr. Ellis confirms Mr. Lucas's Evidence.

Mr. E. Lucas. I don't positively swear that I did not give him that Commission, but to the best of my Remembrance, I did not give him that Commission.

E. of Mansfield. I desire Mr. Ellis may be asked, when he made the Proposal to me, whether he mentioned any Condition whatsoever?

Mr. Ellis. No, my Lords, I did not mention any Condition.

Mr. E. Lucas. Till after the first Conversation with Mr. Ellis, I had no Direction from my Brother to mention any Price or Condition, I gave an Account to your Lordships of two different Conversations.

E. of Mar. When the Answer was brought, that I was satisfied with the Proposal, what did he do farther upon it?

Mr. E. Lucas. My Lords, Mr. Ellis did not tell me, that my Lord Mansfield had no Objection to my Brother, and he had formerly received a Recommendation of him, but at present another Person was recommended by some of the Masters, when he expected to be further recommended.

Mr. Plessner. My Lords, I desire Mr. Ellis may be asked, how long, before Mr. Thynne was admitted, was the Conversation about giving Security, that Mr. Lucas might be indemnified from the Deficiencies?

Mr. Ellis. My Lords, in one of the last Conversations, which was after I had spoken to my Lord Mansfield, Mr. Lucas might say something about having Security. But I don't recollect it with any Certainty; if he did, it was some Days before Mr. Thynne was admitted.

Mr. Serj. Pargely. I desire he may inform your Lordships, whether he ever told my Lord Mansfield any thing of this Discourse about Security?

Mr. Ellis. No.

Mr. Serj. Pargely. He says, he never told my Lord Mansfield of that Conversation; I desire to know if he told my Lord Parker?

Mr. Ellis. No, my Lords, I told Nobody at all.

Mr. Strange. My Lords, I beg Leave to make one Observation; a learned Minister was pleased to observe upon the Appearance of these two Witnesses together, that now the Evidence of Mr. Lucas is confirmed by Mr. Ellis: Your Lordships are pleased to remember, that Mr. Ellis was our Witness, and was first examined; and therefore I should apprehend the Observation may be turned much proper the other Way: That the Evidence of Mr. Ellis, who was our Witness, and was first examined, is now confirmed by Mr. Lucas.

E. of Mar. My Lords, I desire he may inform your Lordships with relation to the Discourse that passed between them about the Deficiencies; whether the Objection did not relate chiefly to them?

Mr. Ellis. I don't well remember what passed upon the Subject of the Deficiencies; what I have said to your Lordships before, I remember full well, because a particular Circumstance made me recollect, that Mr. Lucas did say, he had heard there was no Deficiency in Mr. Berne's Office; which I had heard so; but at what Time that Discourse was, I can't recollect; it might be as he represented it.

E. of Mar. My Lords, I desire to know, that he was willing to treat upon these Terms?

Mr. E. Lucas. Upon those Terms, or to that Effect, I did say.

Mr. Plessner. I only would make this Observation; both these Evidences confirm this, that Mr. Lucas was an inquisitive man, and would not part with his 6000*l*. so easily as to ask no Questions.

Mr. Serj. Pargely. We beg Leave now to call a Witness as to the second Letter or Order, supposed to be lost in November, 1721, to all the Masters. Mr. Canning could not take upon himself to say, that it was delivered; he had kept a Memorandum of the first, but none of that, and he believed he might say it was delivered; we deny any such Letter was delivered, and beg Leave to ask as to that particular Point.

(Mr. John Broom called)

Mr. Serj. Pargely. I desire he may be asked, whether in November, 1721, any second Letter or Order, of the Purport of the first Order, was sent or delivered, in relation to the Masters bringing in their Account?

Mr. J. Broom. My Lords, I never saw any such Letter.

Mr. Serj. Pargely. Did you ever hear of it?

Mr. J. Broom. I never heard of it before, till I heard Mr. Canningham read it to the Bar.

Mr. Serj. Pargely. Did you receive any Account from the other Masters, that they had received any such Letter?

Mr. J. Broom. No, my Lords, never.

Mr. Serj. Pargely. Do you recollect any Discourse between my Lord Mansfield and your Brother, relating to your Brother's Account?

Y D

Mr.



Mr. J. *Erasmus*. I don't recollect the whole.  
Mr. Serj. *Pargely*. What do you recollect?  
Mr. J. *Erasmus*. My Lord hath declared to me, That he wondered Mr. *Kynaston* and my Brother should put such an issue in their Accusation, which would make a Discovery, that the Masters had bought their Places with the money of the Court, which might be of mischievous Consequence; that whenever it was objected to him, he had always taken great Pains to deny it.

Mr. Serj. *Pargely*. Where was this? About what Time?

Mr. J. *Erasmus*. About Christmas last.

Mr. Serj. *Pargely*. We beg leave to take Notice of the Nature of this Evidence, that it is very improper now, being new Evidence; not to the same Purpose to support what was given before, but new matter, and therefore not proper.

Mr. *Lutwyche*. We apprehend it is very proper, because Mr. Thomas *Barnet*'s was objected to, and this confirms his Evidence.

[ Mr. *Haford* called. ]

Mr. Serj. *Pargely*. My Lords, we desire he may be asked, whether this Letter, or Order, of November 1721, was ever communicated to him by Mr. *Cunningham*?

Mr. *Haford*. No, my Lords, I never heard of it till now lately.  
Mr. *Con. Serjeant*. I desire Mr. *Haford* would inform Your Lordships, whether there were not then several Masters senior to him; and whether it is not usual to leave these Letters, or Orders, with the Senior Masters?

Mr. *Haford*. I don't know that such Order, or Letter, was left at that Time. Mr. *Hanb* and Mr. *Falmon* were Seniors to me.

Mr. *Con. Serjeant*. I desire he may be asked the other Part of the Question, Whether it is not usual to leave Orders, wherein the Masters are generally concerned, with the Senior Masters?

Mr. *Haford*. It is not, but the Usage generally is to be left at the Public Office. It might be left with the Senior Masters, far aught I know.

[ Mr. *Locke* called. ]

Mr. Serj. *Pargely*. Did you ever hear or know of this Letter or Order of Nov. 1721?

Mr. *Locke*. I never heard of any such Letter or Order, till I heard it read at this Bar.

[ Mr. *Kynaston* called. ]

Mr. Serj. *Pargely*. Mr. *Kynaston*, will you give my Lords an Account, whether you heard of this Letter or Order of Nov. 1721?

Mr. *Kynaston*. I suppose you mean the Letter which Mr. *Cunningham* read.

Mr. Serj. *Pargely*. The same.

Mr. *Kynaston*. I never heard of it, till I heard it read at this Bar.

Mr. Serj. *Pargely*. I hope this will explain Mr. *Cunningham*'s Want of memory, when he said that he could not remember it.

[ Mr. *Liphook* called. ]

Mr. Serj. *Pargely*. I desire to ask you, whether you know any thing of this Letter of Nov. 1721?

Mr. *Liphook*. I never heard of it, till I heard it at Your Lordships Bar from Mr. *Cunningham*.

[ Mr. *Edwards* called. ]

Mr. Serj. *Pargely*. I desire he may be asked, whether he ever heard of this Letter of Nov. 1721?

Mr. *Edwards*. I never heard of such a Letter, till I heard it mentioned at this Bar.

Mr. Serj. *Pargely*. So that, my Lords, we apprehend this Letter, when written by Mr. *Cunningham*, was a Pocket-Letter to be made use of on any proper Occasion. The Managers have done with their Evidence and the Witnesses; they shall call no more. We humbly apprehend, that it was clear upon the Record, why the Lord took 5000*l.* rather than 3000*l.* It was from Hopes of greater Gain in having 5000*l.* absolutely, without being liable to refund, than 3000*l.* liable to such a Contingency. Upon this Evidence we submit the whole matter to Your Lordships Determination.

Mr. Serj. *Pargely*. My Lords, we will be short in our Reflections upon this new Evidence. We apprehend their Evidence proves, what was insisted upon by us, that there was Care taken in disposing of these Offices, and that my Lord *Macclesfield* having personal Knowledge of one Gentleman did prefer him before another, whom he did not know, though he had his money from him, than he could have had of the other. It is agreed by Mr. *Locke* and his Brother, that there was a proposal of 3000*l.* made upon this Occasion. Mr. *Edwards* tells you, Mr. *Locke* gave him Orders to propose it to my Lord *Macclesfield* without any Terms whatsoever: He never mentioned any Terms, or intimated any Condition or Refinement to my Lord *Macclesfield*. Upon that his Lordship was pleased to direct a proper Enquiry to be made, what Security he was able to give for the Discharge of his Office; here there was 5000*l.* proposed without any Terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 3000*l.* This doth not show any Neglect in the noble Earl; but all the Care and Caution that ever could be taken; and this shows that the Earl could not do this out of an immoderate Desire of Gain, when 5000*l.* was proposed to be given; but he preferred another whom he knew to be well qualified for less money, to us we apprehend this is an Evidence which is much in favour of the Earl. As to the other matter, the Masters not knowing of this Letter, your Lordships observe what Evidence was given by Mr. *Cunningham*. This is a Transcription some time ago, he says that he wrote this Letter by the noble Lord's Order, that he cannot now say to which of the Masters he delivered it, or whether it was personally delivered by him, or by one of his Clerks. Your Lordships will observe, that there were two Masters Senior to Mr. *Haford*, viz. Mr. *Herriman* and Mr. *Falmon*; and it might properly be delivered to one of them; one of them or since dead, the other is yet living; but we were not aware of the Objection, and to have not him here. This doth not impeach Mr. *Cunningham*'s Credit or his Evidence, so far as it concerns the Earl.

Mr. *Con. Serj.* My Lords, I will not enter into a strict Comparing of the Evidence; we apprehend that what Mr. *Edwards* swears stands confirmed in every thing by Mr. *Locke*; and we have Reason to thank the Gentlemen of the House of Commons for this Evidence. There was no material Part of our Evidence, that the Earl had a thorough Intention of entering into the Regulation of these matters, but by Objects acting in relation to the Jurisdiction of the Master or the Rolls, he was hindered.

Now the Evidence of Mr. *Locke* corroborates our Proof on this Head; he saith, that Mr. *Cunningham* said him, that Security had not been taken, yet at present the noble Lord had a Reformation in View, and Security would be expected; and therefore he enquired what Security he could give; there was not only an Enquiry into his present Circumstances, but likewise an Intimation that security would be expected. This shows the Earl's Intention; and if the Theft of Gain had swayed him, Mr. *Locke* would never have had those Baggages to afflict him from giving so much money. Upon the whole, it appears that no part of our Evidence is any way impeached by the new Evidence they have given.

Earl of *Macclesfield*. My Lords, I beg leave to say a very few Words upon what hath been newly offered, as to the Evidence to clear off my having preferred 5000 Guineas with a Pension I thought a better way, so 6000*l.* with another, where I thought a good man. I apprehend it is not taken off at all by any Thing that has yet been offered. Mr. *Locke* owns that at the first Time there was an Expectation of Security, and he has given your Lordships an Account that he asked what Security was expected; and was answered I think to the Value of 50000*l.* and that what he spoke of the Deficiency, was only that he should not be liable to further Orders to be made upon him for Contribution to the former Deficiencies of other Masters; and in the latter Time, when the Claimant was greater, Mr. *Edwards* offered me 6000*l.* without any Condition, and I said I approved of the Pension and of the Offer, but I had another Gentlemen then under Consideration. Their Evidence indeed varies as to the Particulars of the Conversation they had upon this Subject: But whatever Discrepancy passed between them, unless it came to my Knowledge, it ought not to affect me. I never heard, nor is it so much as pretended, that I ever did hear, there were any manner of Terms or Conditions whatsoever annexed to the Proposal made by Mr. *Locke*.

Mr. *Edwards* has been asked this Question, and has sworn positively he mentioned none at all; and I declare that it is not the least Pretence that the Bench, supposing Mr. *Locke* intended any to the Proposal (which I must observe is fully contradicted by Mr. *Edwards*'s Evidence) ever came to my Knowledge.

As to what Evidence is given in relation to the Letter of November 1721, your Lordships will remember, that when I spoke of that, I entered upon it as a Thing not at all necessary for me; because they had not proved the Article, that the Letter writ in February was with an Intention to turn the Masters into a Contribution; but all the Proof they produced was, that the Masters had paid a voluntary Contribution, and upon that they made some Observation; but not one of the Masters ever gave your Lordships an Account that they did it by Reason of, or under the Terror of this Letter: they have called every one of them, and not one hath said so, but agreed that they had paid it as a voluntary Contribution; so that there is no manner of Occasion for what hath been said about this Letter. Mr. *Cunningham* did say before your Lordships, that he thought the Letter was sent, and he bid no Reason to believe the contrary; but indeed he had no recollection of its being sent. It is very extraordinary to suggest, that this should be a Pocket Letter. Can any Person imagine that that Letter was calculated for an Occasion like this? Was there any Apprehension of this Prosecution in 1721? My Lords, it is not worth while to trouble your Lordships with any more Remarks about so groundless a Pretence. In the Reply they have been something new offered to your Lordships to make out my receiving money from the Masters to be an Offence against Common Law, and there have likewise been mentioned several Acts of Parliament, to restrain of which I have had any Opportunity of giving an Answer before; I therefore apprehend I have a Right to take Notice of them now. And first I beg leave to observe to your Lordships, that every one of these Acts of Parliament relates plainly to Judges who take Bribes, or take money for doing their Duty, or for doing those Things they were bound so do; they lie upon your Lordships Table, and if your Lordships will but look upon them, you will find all to be so.

That of *Mayors Chens* is plainly so, that Justice shall be administered to the Party without paying for it.

So the Statute of 22. R. II. that they shall.—

Mr. Serj. *Pargely*. My Lord cannot be regular to reply to us on that Statute.

Earl of *Macclesfield*. The Statute is, that they shall not make any Office for Bribes.

Sir G. *Owen*. We must submit it to your Lordships, whether this can be regular; the noble Earl hath had his Defence, we have replied; it is not regular for him to enter into a Debate now.

The Statute is upon your Lordships Table; and your Lordships will consider it.

Earl of *Macclesfield*. I will not take up your Lordships Time any farther in insisting upon it, but I hope at least those Gentlemen will not oppose my taking notice of one Thing that is new, though not any part of the Articles, which is what the Gentlemen have said with relation to *Wylls* Composition not being binding upon the Sutors of the Court; that it is matter of Honour that *Wylls* should stick to the Faith of a Court of Justice, and upon that enter into a Composition, which at last should not be effectual and binding. To that give me leave to answer, that he *Wylls* had acted honestly, and given a fair Account of his Estate and Effects in this Case, and it had appeared upon the whole, that he could not pay more than according to the Composition; and at the same Time that it must be a real advantage to the Sutors to have received this Proposition of what he was able to pay, without the Expenses of a Statute of Bankruptcy; in that Case he would have been liable to the Statute, and in this Case he could have paid more, and this appeared only to be a fraudulent or unfair Composition, it would be no way conclusive upon the Sutors; and as he ought not to wrap any

Benefit,







Thomas Lord Macclesfield,  
George Lord Hey,  
John Lord Gower,  
Henry Lord Herbert,  
John Lord Ashburnham,  
James Lord Walsingham,  
Charles Lord Lyons,  
Charles Lord Cornwallis,  
Charles Lord Broke,  
William Lord Brouncker,  
James Lord Gough,  
William Lord Haydon,  
Hugh Lord Gifford,  
John Lord Dunsford,  
Aylmer Lord Percy,  
William Lord Arden,

Stephen Lord Bishop of Exeter,  
William Lord Bishop of Bristol,  
Edward Lord Bishop of Chichester,  
Richard Lord Bishop of St. David's,  
John Lord Bishop of Norwich,  
John Lord Bishop of Carlisle,  
Joseph Lord Bishop of Exeter,  
Thomas Lord Bishop of Ely,  
William Lord Bishop of Winchester,  
Samuel Lord Bishop of Rochester,  
John Lord Bishop of Oxford,  
Richard Lord Bishop of St. Asaph,  
Richard Lord Bishop of Winchester,  
William Lord Bishop of Durham,  
Edmund Lord Bishop of London,

George Lord Viscount Torrington,  
James Lord Viscount Horwath,  
Richard Lord Viscount Calhoun,  
Henry Lord Viscount Telford,  
Henry Lord Viscount Leinster,  
William Lord Viscount Howe,  
Charles Lord Viscount Torrington,  
Leicester Lord Viscount Sey and Seal,

Thomas Earl of Pembroke,  
Benedict Earl of Harborough,  
William Earl of Cadogan,  
Talbot Earl of Suffolk,  
George Earl of Hylton,  
John Earl of Northampton,  
Thomas Earl of Stafford,  
Walter Earl of Forster,  
Archibald Earl of Ross,  
Henry Earl of Devonshire,  
John Earl of Stowe,

George Earl of Arden,  
Charles Earl of Selkirk,  
James Earl of Findlay,  
David Earl of Buccleugh,  
John Earl of Rutland,  
George Earl of Chesham,  
William Earl of Albemarle,  
Frederick Earl of Sandwich,  
Richard Earl of Scarborough,  
Montague Earl of Sandwich,  
William Earl of Tarnmouth,

Richard Earl of Burlington,  
Charles Earl of Carlisle,  
Nicholas Earl of Suffolk,  
Robert Earl of Sandwich,  
William Earl of Orkney,  
Edward Earl of Warrack,  
George Earl of Northampton,  
John Earl of Leicester,  
Henry Earl of Lincoln,  
Thomas Earl of Pembroke,

John Marquis of Tondale,  
James Duke of Chandos,  
William Duke of Devonshire,  
Philip Duke of Wharfedale,  
Thomas Duke of Newcastle,  
Perceval Duke of Argyll, Lord Great Chamberlain,  
John Duke of Rutland,  
James Duke of Argyll,  
John Duke of Devonshire,  
Charles Duke of Devonshire, Lord Chamberlain,

John Duke of Devonshire, Lord Steward,  
William Duke of Devonshire, Lord President,  
William Lord Archbishop of Canterbury,

L. C. J. Kay. My Lords, your Lordships have unanimously found Thomas Earl of Macclesfield guilty of High Crimes and Misdemeanours charged upon him by the Impeachment of the House of Commons.

[Then the Managers of the House of Commons and the Counsel for the Earl of Macclesfield were called in.]

Wednesday, 26 May, 1725. The 12th Day.

[The Lord being sat, and the Managers being come, the usual Proclamations were made for Silence.]

THEN the Gentleman Usher was commanded to call in the Earl of Macclesfield, who being come to the Bar, the Speaker acquainted him, that the Lords had fully considered of his Case, and had unanimously found him guilty of High Crimes and Misdemeanours charged upon him by the Impeachment of the House of Commons.

Guilty, upon my Honour.

Guilty, My Lords, I am persuaded, that if your Lordships knew what I had, your Lordships would not have required this of me, the rather as I did not seem to make any Excuse, in relation to the Proceedings, or the Lordships any further Trouble. I am now so exact your Lordships Judgment; and I hope that you will be pleased to consider, that I have suffered so small esteem already in the Trial, in the Expense I have been at, the Fatigue, and what I have suffered other-ways; before the cruel Diffemmer which this hath brought upon me. I have paid back to you of the Money already, I have lost my Office, I have undergone the Contempt of both Houses of Parliament, which is itself a very severe Punishment, My Lords, the Delinquency of Mr. Dunsford hath cost me 15,000*l.* but, as your Lordships, so was not through any Fault that the Delinquency happened, was that Matter put by me; and the contrary, with great Delinquency, so reduced by my means to 10,000*l.* less than otherwise it would have been. My Lords, all the Lords that can be taken by any thing on record against me, is only what some of the same might have had more for their Protection, than they can do now out of Mr. Dunsford's Pocket. But it came so about myself, his Effects are about 15,000*l.* which is about 10,000*l.* I don't find there is one Saint that had such an Example that he hath not received his Five Shillings in the Year, Mr. C. hath received his share.

My Lords, we must submit to your Lordships. This was proper when the noble Lord was making his Defence; but it is not so in the Court of Judgment. Your Lordships have found the Earl of the F. and he is now arguing in Defence of it: If he hath any thing in his Defence, he may say it, and the Commons are here ready to answer.

I was very unwilling, My Lords, so interrupt the Earl, and it is with great reluctance, but it is for the sake of Regularity in your Lordships Proceedings; and we must appeal to your Lordships, whether the Lord is not now giving me a Reputation of what he said in his Defence.

My Lords, I submit, whether this be not proper in relation to your Lordships Sentence; but whether it be or be not, I leave myself to your Lordships Justice and Mercy; I am not the author of it, nor will be wanting, and I extend myself. I don't know whether your Lordships will be pleased to dismiss my Attendance at that Time, or whether your Lordships will require me to come again under this very great Disgrace.

I submit it to your Lordships.

Then the Earl said, as also the Managers, were directed to withdraw; and the House adjourned. Thomas Earl of Macclesfield was committed to the Custody of the Gentleman Usher of the Black Rod; and then proceeded to the Consideration of what Judgment to give upon the Impeachment against the Earl, and afterwards adjourned to Thursday Eleven of the Clock, the 27th of May.

Thursday, 27 May, 1725. The 13th Day.

A Message was first to the House of Commons by Mr. Baron Pope and Mr. Justice Dretton, to acquaint them, That the Lords are ready to give Judgment against Thomas Earl of Macclesfield, if they wish that Speaker will come and demand the same.

Hereupon a Motion was made, and the Question proposed, That the House will demand Judgment of the Lords against Thomas Earl of Macclesfield, which occasioned a warm Debate, that lasted till Five in the Afternoon, when the previous Question being put, that the Question be now put, it was carried in the Affirmative by a majority of six Voices against five; and then the main Question being put, it was resolved, That this House will demand Judgment against Thomas Earl of Macclesfield. This done, the Commons sent a Note to the Clerk of the House, by which he was given to the Members, who were appointed the Managers of the Impeachment against Thomas Earl of Macclesfield, for their final Answer to the said Discharge of the Truth received in Court. His grace Mr. Speaker gave them, their handling up to the Clerk of the House, the Thanks of the House, as follows:

It is with the greatest Chearfulness that I obey the Commands of the House on this Occasion; and yet I was never, on any Occasion, more sensible of the Difficulties or performance than as I ought, but I have this satisfaction in this Motion being made when I felt myself in it, that my not being prepared may be some reason for those Delinquencies which I should not have been able to have supplied, had I had more to spare a Time for Consideration.

THE SPEAKER, My Lords, you have maintained the Charge of the Commons, with that Force of Argument, Beauty of Expression, and Strength of Reason, as would have gained you the highest Applause in the most flourishing of the Great Commonwealth; and I may add,

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*Attest, in Presence of the Lords, Justice General, Justice Clerk, and Counsellors of Justice, he ought to be and respectably guarded with the Point of Law, to the Terror of others to commit the like in their coming.* Sir *Blackburne*, *Ch. Justice, A.D.*

*Prolocutors in Defence.*  
*Duncan Forbes, Esq. his Majesty's Advocate.* Mr. *James Graham, junior.*  
 Mr. *Charles Eglinton, his Majesty's Solicitor.* Mr. *Henry Home.*  
 Mr. *Hugh Farish, his Majesty's Advocate-Depute.* Mr. *James Leitch.*  
 Mr. *James Hutton.* Mr. *James Wilson.*  
*Advocates.*  
 Mr. *Henry Murray, Kinross.*  
 Sir *James Evershagen.*

The Libel being openly read, and Debate since, in Presence of the Judges, Panel, and Jury, the Lords ordered each Party to give in their Informations in the Clerk of Court, in order to be recorded, and the Parties to give in theirs against Friday next, at six o'clock at Night, and the Prolocutors for the Panel to give in theirs on Friday there-after, and continued the Cause till Friday the twentieth instant, and ordered *Andrew Wilson* and *William* then to stand, and the Panel to be carried back to Prison.

July 12th, 1736.

*Information for his Majesty's Advocate for his Majesty's Interests, against John Porteous, late Captain Lieutenant of the City Guard of Edinburgh, Panel.*

**T**HE Panel is charged by the Indictment, with murdering, slaughtering, maiming, and wounding, divers of his Majesty's Subjects, by setting with his own Hand the cooling and ordered a band of armed men under his Command, to fire upon a multitude of innocent People, assembled to see an Execution in the *Grass-Market* of the City of Edinburgh, without any just Cause or Provocation, contrary not only to the Laws of God and Nature, and to the good and laudable Laws of this and all other well-governed Realms, but also contrary to the express Duty of his Office, who was one of the Commanders of the City Guard, intended to preserve the Peace of the City, and to protect the Inhabitants thereof from all Violence, and who was on that Occasion entrusted with the Command of a large Detachment of the said Guard to preserve Peace and Order, to enforce the Execution of a Sentence of the said Court of Justice, and to prevent all Riots and Tumults, whereby the Execution of the said Sentence might be disappointed, the Laws might be violated, and the People assembled might be hurt or destroyed.

The Indictment sets forth, particularly, That at the Time and Place aforesaid, where a great multitude of innocent Persons of all Ages, and of different Sexes, were lawfully assembled, to see the Execution of *Andrew Wilson*, sentenced to be hanged by the High Court aforesaid, the Panel having under his Command a Detachment of heavily armed men of the City Guard, and having conceived a stiff wicked and malicious Purpose of deliv'ring, maiming, and wounding Numbers of his Majesty's Subjects, the Inhabitants of the said City, and others assembled to see the Execution, without any just Cause or necessary Occasion, ordered the said Detachment under his Command to fire upon the People so assembled, that one man under his Command, having probably, in his Apprehension, fired over the Heads of the People, he, with Threats and Imprecations, repeated his Commands to fire, calling out to them to level their Pieces, and be damn'd! that at or about the same time he levelled the Fire-lock that was in his own Hand, killing *Andrew Wilson* at one Charles *Handley* and fired at him, whereupon he immediately dropt to the Ground, having received Wounds, whereof he instantly died; at least, that he levelled his Piece, seeming to take Aim at some one in the Crowd, and fired it; and that upon his firing, the said *Charles Handley*, or one or other of the Persons in the Indictment aforesaid, having received Wounds by Bullets, of which they instantly died; and that by his Commands and Example, several of the City Guard under his Command, fired upon the innocent Multitude, whereby the Persons particularly mentioned in the Indictment, were killed, maimed, and wounded.

The Indictment further charges, that not contented with this Barbarity, the Panel, after he had marched off his Detachment towards, or unto the Place or Street called the *Widow Row*, again ordered the men under his Command, in face about and fire upon the People, and at or about the same time, fired a *Market or Fackel* that was in his own Hand, having either received, or caused to be received, the Piece formerly fired by him, or having taken another out of the Hand of one of the Guard; and that several of the said Guard did, upon that second Example and Command, fire upon the multitude, whereby the Persons defended in the Indictment, were killed or mortally wounded. And the Indictment concludes in common Form, that the Panel is guilty, or Alike at and part of the Crimes aforesaid, or one or other of them.

The Charge in this Indictment is so heinous, that one should have imagined it would have been decent in the Panel, to have made no Objection to the Relevancy, and to have founded upon no Defence for avoiding the Effect of the Libel, if true, but to have contented himself with a full Denial thereof, opposing himself upon his Innocence, if he is truly not guilty of the Facts alleged, without any other Defence; but that of knowing a full Examination of unbelief Witnesses, to be produced by him as well as the Prosecutor, in order to discover the real Circumstances of the Transaction.

But his Prosecutors, it seems, thought it their Duty to move every Objection against the Relevancy of the Libel, and to offer every Defence that their Information could suggest from a particular Relation of the Circumstances of the whole Transaction, on which they laid before the Court upon their *Prolocutors*, Information, and which they offered to prove, to make good this Libel.

This informed the Court, therefore, on behalf of the Panel, That the *Magistrates* apprehending, that some violent Attempts might be made for rescuing *Wilson*, the Offender sentenced to be hanged, had ordered the

Panel to attend the Execution, with the greatest Part of the City Guard, to support and protect the Executioner in the Discharge of his Office, with Directions to compel Force by Force, so as to make those Drive out effectually, Powder and Ball were by the Town Treasurer delivered out of the Town's Magazine to the City Guard, the meeting of the Executioner, with Directions to load their Pieces. This had also this Provocation, the Danger of the Refuge appeared to the *Magistrates* so great, that they sent one of General *Myde*, and obtained a Discharge of the *Regiment of Troops*, who were posted near the Place of Execution, in order to support the City Guard, if there had been Occasion; and whose Commands were now, that the Lord Provost would give them Authority to fire, if it should prove necessary; that the Panel with the Town Guard attended accordingly the Execution; that when the Offender was hung up on the Gallows, the *Magistrates* retired from the Scaffold, and repaired to a House over against it in the *Grass-Market*, that since the Offender had been hung up for some Time, the multitude became unruly, and began to sing *Songs* of great Size, and with great Violence, that some of the Guard were thereby hurt; one had his Shoulder Blade broken, others were bruised, and the Timber of the Drum was beat to Pieces; that the Indignation of the mob growing still greater, and they pressing from all Sides upon the Guard, the Panel, who apprehended they might have intended to carry off the Criminal, who by this Time was cut down, in order to attempt the rescuing him to Life, found it necessary for him to keep off the multitude by Threats and Menaces; that to this End he presented his Piece, first to one Quaterly, and then to another, calling to the People to stand off, and threatening that if they did not, he would fire; that nevertheless, he neither fired himself, nor gave any Orders to fire, but, on the contrary, when some of the Guard, provoked by the Harsh words received, and without his Order or Authority, presumed to fire, whose Example was followed by several others, he did all he could to prevent that mischief, by commanding them to desist, and actually did beat down the muzzle of one of the said Pieces, who was pointing it in order to fire; that finding he could not be obeyed, he endeavoured to march off his men, and prevailed with several of them to follow him some small Way on the *Widow Row*, when again some of those men who followed him, provoked by what he did not know, faced about, and faced towards the *Grass-Market*; that the said *Neuter* he had of this Firing was by hearing it, which made him turn about in order to stop it; that at this last Place he neither fired, nor gave Orders to fire, that he marched as many of his men as he could gather together back to the City Guard House, that there he prevented the mob, by showing their Pieces, and that he did not doubt he might be obliged from the innocent who did not fire, that his own Piece had not at that Time been at all fired; that conscious of his Innocence, and that he had on this, as well as on every former Occasion, done his Duty with Patience and Temper, he presented himself before the *Magistrates*, whereas nothing was easier to him than to have made his Escape, and that in their Presence the Firelock which he had in his Hand was presented, and appeared not to have been at all fired; and that therefore it was impossible the Libel, as libellous, could be true.

From this, which was said to be the Substance of the Case, the Prosecutors for the Panel contended first, That the Libel was insufficient, as not denoting with proper Accuracy the particular Part of the Street where the Person supposed to be shot by the Panel stood, and his Situation with respect to the Panel at the Time, because thereby the Panel was deprived of the Opportunity of making his Defence, by founding it particularly on Circumstances which he might avail himself of, if the Persons and Situation had been distinctly described.

To this it was answered, That the Libel is as particular as the Law requires, describing the Street where the Execution was had, which is all that the utmost Scrupulousness could expect in such a Case. Must Circumstances cannot be known to the Prosecutor, or certainly if known, not by Proof upon the Trial: Every Circumstance of the Panel's own acting must be known to him, and he refused, if from the Position or Situation which he was in at the Time of the Firing, he could have done it, it is impossible he could have killed the Person whom he is charged to have killed, describing and passing these Circumstances, he may have Advantage from them, but cannot object to the Prosecutor, that he did not minutely describe a Situation that was not known to him, and which describing, he has erroneously might consider as an *unlawful* Occasion to a Criminal to escape Justice: Wherefore this Objection to the Form of the Indictment ought to be rejected.

But in the second Place, the Prosecutors for the Panel, very unnecessarily, one should think, if it is innocent to bring, or ordering to fire, and in some Degree inconsistent with that Piece, alleged, That the defendant Powder and Ball to the City Guard, the meeting so great a Detachment to attend, the calling out the signal Troops to support the Town Guard, the Intimation to the Commander or whole Troop, that they should have Orders to fire, in case of necessity; and the Direction to the Panel to support the Execution of the Sentence against *Wilson*, and order of a *Market or Fackel* to be discharged by the Guard, amounting to a full Order from the *Magistrates* to fire, when it became necessary. And that the violent Affairs made by the mob, as aforesaid, with Stones, which were to be considered as lethal Weapons, in order, as the Panel believed, to carry off the Offender, in Hope of rescuing him to Life, made it necessary, in order to prevent the same, that the *Magistrates* should order the Order, and thus violent Affairs, which as aforesaid, ought to be sustained and advanced to Proof, as a total Defence against the Indictment, at least as Circumstances fit to mitigate the Punishment, and release him from the *pass* of a *Sentence*: Since the Panel being sworn as aforesaid, and engaged in the Discharge of a full Piece of Duty, if any Excess was committed by him, it ought not to be attended with equal Punishment, and ought to be corrected *coram iudice*, according to the Degree of the Excess.

To this it was answered, That *Wilson* it were true, which is not all upon the Part of the Prosecutor desired, that the *Magistrates*, upon Apprehension of Disorders, and as a means for a violent Rescue of the Criminal, who was threatened to die, his armed Powder and Ball to be delivered to the Guard, had ordered some Numbers, and obtained Assistance from the Commander of the regular Troops, with Assistance,











Guard, and while the *Convicts* were thus at Church, *Rohrer's*, one of them, found means to escape from his Keepers of the Guard, by suddenly jumping over a Pew, and getting out at the Door of the Church; his Escape apparently being secured by the Mob, or lowest Sort of the People, he easily made his Escape, without having been ever once overtaken.

From this Escape of *Rohrer's*, so favoured by the Mob, and from *James Samuels* and *Suppliment*, that, at the Execution of *Wright's*, a Refuse was intended by the Mob, which indeed there was a reasonable Ground to apprehend, because the *Commons* have imputed a pernicious and abandoned Council, as if of the Robbing of the Publick Money, was a Crime more pardonable, than private Robbery: Therefore it was, as the Panel apprehended, that the Magistrates of the City, from a Sense of their Duty to prevent the Execution of the Laws being any further defeated by the Refuse of *Wright's*, took the strongest Precautions that the Execution of him should be made effectual.

In Consequence whereof, as would seem, the Provost of the City sent for the Panel, in whom, he must take the Liberty to say, Confidence was generally put upon those difficult Occasions, and told him, that there being great Apprehensions of a Mob at *Adamo Wright's* Execution, that therefore there was a Necessity to be well prepared to prevent the Design, and for that end, that he would have the whole City Guard to attend at the Execution, he having given Orders to the Towns-Trustee to furnish the Men with Powder and Shot, and each other Military Ammunition as might be necessary for the Use of the Men in maintaining the Peace of the Town, and supporting the Execution of the Laws. And this Conference with the Provost happened upon the Monday preceding the Execution of *Wright's*, which followed on the Wednesday thereafter. But it seems the Magistrates of the City, not thinking even this Precaution sufficient, upon the Tuesday thereafter, the Provost sent the Panel with a Letter to General *Mytchell* Requesting that the City, and Chief Commander of the Forces in Scotland, telling the Panel, that the Import of this Letter was, desiring from the General an Order for a Party of the Regiment lying in the *Commons* to enter the City (as I have very uncommon, except in the Case of urgent Necessity) in order to over-awe the Mob, and thereby maintain the Peace during the said Execution.

It seems this Letter to the General induced him to send a verbal Message in return thereto, by a Person of known Honour and Veracity, *Major Paul*, of that Regiment now lying in the *Commons*, who told the Provost, that the General wanted to know of him, what part the King's Troops were to take, and what Precautions had been taken for preventing any Insult or Invasion that might be made upon the Troop, or what Length their Troops might go in the case of Tumult or Disturbance. To which the Provost made answer, That there was no reason to apprehend any Inconvenience would happen to the King's Troops, because he would have them only to parade, for a Terror to the Mob, as a Sheet called the *Louis March*, removed from the Sight of the Execution, but at a small Distance only, where nevertheless they would be ready at a Call in case of Necessity, but that he had ordered the whole Band of the City Guard to attend at the Execution in full, with proper Arms and Ammunition, namely, *Blasé* Shot, with Orders to resist Force by Force, and even to discharge their Arms among the Mob in case of Rebellion.

On Wednesday the Day of the Execution, the Forenoon, the Panel attended the Provost, and told him, That in Obedience to his Commands, the Men were all ordered to be in Readiness, their Arms put in order, and loaded, whereof the Provost approved, and told the Panel, That he was to be ready betwixt Two and Three in the Afternoon, with his Guard, and to draw out until the Party of the King's Troops from the *Commons* put him; and that so soon as the King's Troops were drawn up in the *Louis March*, the Panel, with the City Guard should forthwith march to the Prison, and conduct the Prisoner to the Place of Execution, without allowing him first to go to the Town's Council-house, as usual, fill with Intensions, as would seem, to prevent any Opportunity of Refuse, or Disturbance upon that Head; and at this Time as the Forenoon the Panel humbly proposed to the Magistrates of the City, that they would find a Proclamation through the Town, as a Caution to such innocent unwary People, as might by Curiosity be drawn to the Sight of the Execution, warning them of their Danger, in case any Disturbance should happen, or attack be made upon the Guard. And accordingly *George Lowry*, one of their Clerks, made a Scroll of the said Proclamation to be sent through the Town; but for what Reason it was not proclaimed, the Panel knows not, and at the same time the Panel remembers some one of other of the *Common-Council* of the City proposed a case of Disturbance, the reading of the Riot Act, and for that Purpose sent for a Dozen of Copies of the Act to a Bookbinder's Shop, in order to distribute them among the proper Officers of the Law, authorized to read and proclaim that Act; but it seems at no time other of those Proposals were put in Execution, nor at the Time of the said Execution, did any Officer of the Law, authorized to proclaim that Act, stand with the Panel.

A short time before the Panel marched with his Men from the Guard-house, towards the Place of Execution, he was heard say, That he had no Carriage in his Box, on which a Corporal told him, that he would get him some; and accordingly the Corporal did, in possession of several of the Men, upon the Panel's Carriage Box, wherein it was observed that there were no Carriages, and put these Carriages therein, with one of which the Panel loaded his Horse, and immediately marched away with the Men.

When the Criminal was conducted to the Scaffold erected for his Execution, the Detachment of the City Guard were posted on the Street, in a Circle surrounding the Scaffold, in order to keep off the Mob; but because of a certain Building, called the *Common-hall*, high adjoining to the Scaffold, part of the Men did not inclose that Building. And here it may not be improper for the Court to call their Eye upon a Plan of the Ground, and the Posture of the Men, in order to have a clearer view of the Defectiveness to be hereafter mentioned.

So soon as the Criminal was thrown over the Ladder, and so left hanging upon the Gibbet, the City Bailiffs immediately withdrew right to, Vol. VI.

directly opposite, and in view of the Scaffold, but without leaving any Order or Officer of the Law to attend with the Panel: And it had happened, that I was first present before the Act of Execution, while the Minister was assisting the Criminal by Prayer, the Panel had gone up to join, leaving his Horse with the Surgeon; and so soon as publick Prayer was ended, or some short time after, and the Criminal left to his own private Devotion, the Panel took back his Horse in his Hand, and afterwards came off the Scaffold, and posted himself at the West End of the Detachment of the Guard.

So soon as the Criminal had been hung upon aloft, and that the City Bailiffs had withdrawn from the Scaffold, the Mob became to be troublesome, intending, as would seem, to take this last Shift, immediately to cut down the Criminal, and endeavour to bring him to Life by bleeding; an Expedient, which when timely applied, has on many other Occasions been known to be attended with Success, and the Mob fell a-murmuring, that they would have him instantly cut down, and if it were not quickly done, they would do it themselves: And at that time they pressed hard upon the Guard, striking at them with Sticks, forcing of their Fire Arms and Bayonets, and throwing extending big Stones at the Guard; one whereof cut a Drummer to the Skull, another broke one of the Men's Shoulder Bones, another wounded one of the Men's Legs, and forced others of the Men were wounded, whereby they are yet unable to do Duty: The Truth of all which can be attested by their common Surgeon, who is by the City ordered to attend them upon all Emergencies.

This Insolence in the Mob alarmed the Panel, and still observing it to increase, he was apprehensive that the Mob might address the perfidious of the Execution; for no Criminal can be cut down from the Gibbet, but upon the Order of a City Bailiff, upon a Judgment that the Criminal has hung up until he is completely dead, agreeable to the Statute, which always commands such Criminal to be hanged until he be dead; therefore it was that the Panel sent a Message to the Bailiffs, to know if he should suffer the Criminal to be cut down from the Gibbet, who brought back an Answer, That the Criminal was to hang there yet for a Quarter of an Hour.

At this time the Mob wax'd exceedingly bold, became very turbulent, and pressed hard upon the Guard, and while the Panel was endeavouring to keep off the Crowd from pressing among the Soldiers, at one End of the Scaffold, some of the Criminal's Friends, assisted by the Mob, called the Opportunity and cut him down without any Order: And tho' the Criminal, being thus cut down, was in the Possession and Keeping of the Mob, who were endeavouring to rescue him to Life, by cutting the Veins of both Arms to the quick: Whether it was that they were apprehensive, that the Guard would recover him out of their Hands, as having been cut down without Order; or that the Officers of the Law were designed to fire to his Intermittent, and that he was executed to death; or that the Criminal's Body was intended to be given to be anatomized by the Surgeon, as is sometimes practised, where Persons of low Demeanor or notorious Offenders are sentenced to Death; or from whatever Motive it proceeded, the Mob began to insult and attack the Guard: And upon this Attack it was, that the Man stood fast his Shoulder Blade broken; and another so bruised, that he has been never able to do Duty since; and the Timber of the Drum was broke by the force of an extending large Stone that was thrown, and several others of the Men were hurt and wounded.

This Violence in the Mob so alarmed the Panel, that he made a Step or two forwards to the Westward of the Scaffold, turning about his Face towards the West Port, from whence the throwing of the Stones mostly proceeded; and having put his Piece to his Shoulder, he levelled it at the Mob, and pointing it around to them, threatened with an audible Voice, That if they would not be at Peace, and leave off throwing Stones, and attacking the Men, he would fire among them; but immediately recovered his Piece without firing it, the Thunders being so intemperate to intimidate the Mob.

But unfortunately upon this instant the whole Tragical Scene; for so soon as the Panel steps forward, threatening to fire as aforesaid, but one of the Men came up from behind him, and running by him upon his Right Hand, instantly discharged his Piece, upon which one of the Crowd dropped down, supposed to be *Charles Highland*, and which *Charles Highland* will upon Proof be found to have been the Person who simultaneously stepped in and cut down the Criminal.

Immediately upon this first Fire, another of the Guard came up to the Panel, with his Piece primed and cocked, and said if he should fire, to which the Panel answered with some Vehemence, No, by no Means, and struck up his Piece, hiding him up to his Back, and actually thrust him back.

After the Example of this first Fire several more of the Men were heard to discharge their Pieces, but upon what Provocation the Panel cannot tell; these Shots having been at a considerable Distance from the Panel, proceeding, as is supposed, from such of the Men as were standing at the South-west Corner of the *Common-hall*; whereas, as has been noticed, the Panel was still standing at his former Station, to the West of the Scaffold and Gibbet.

The Panel not knowing the fatal Consequences of these Shots, but supposing however that Michael would happen, being the Men had been so rash as to fire without Orders, thought it was the best Course he could take, to lead off the Men of the Guard as soon as he could; and for that end he called aloud to them to follow him, and after having given Orders to the Sergeants to gather them together (for it was impossible to bring them into Ranks by the confusion of the Mob) he marched off as many of them as he could find, by the North-side of the Scaffold, towards the Foot of the *High Wall*, and towards a Panel of the Men, whom one of the Sergeants had got together at the Foot of the Wall, but as he was going to join that Panel of the Men, he heard a Piece fired near him, with which he was a good deal surprised, and yet more, when he observed two or three People fall to the Ground, and which Observation was the first thing that greatly alarmed the Panel, as



knowing the Court, short-embodiment Michael was done: But it is certain that the Court was not present from the Panel, but from a certain Man, who was the Guard, and that can be well seen, who, after having fed the Ship, immediately retired amongst the Court, and then gave him self to the Jury. And surely the Magistrate of the City will remember, that when a Prosecution was taking of the several Facts and Circumstances upon this singular Day, that a certain Person told them, That if they would be pleased to fill the whole Band of the Guard before him, he would point out the Man who did the last Fact, but the Magistrates overlooked this Offer.

As soon as the Panel saw there was no refraining the Men from Irregularities, he marched off to many of them as he had got together, without taking time to form them into any Order, or giving Orders at the same time to the Sergeants, to beat and press off the rest with all manner of Dispatch. Upon which he observed that men had struggled come off partly from about the Scaffold, and partly from behind of the Gallies, and fell into the River; and while the Panel was thus marching up the River, upon the Front of the foremost Part of the Mob, and had come as far as the Turn of the River, he heard some deeping Shots being in the River, and about thirty or forty Paces distant from him, which he supposes may have proceeded from those Men who were dragging upon the last side of the Gallies, high to the Head of the Gallies, but upon what Occasion the Panel knew not, but being alarmed with the Shots, he looked back, supposing the Men might be attacked by the Mob, and observing no Marks of any such Attack, he thought the most prudent Course he could take was forthwith to march off the Mob.

It falls here to be noticed, That all this Firing, from first to last, and whereby so much Mischief has been done, lasted not above two or three Minutes, and therefore, confining the Violence of the Mob, and the dragging Situation of the Men of the Guard, and supposing the Truth of the above Narrative, which will be attested in proper Time by the Oaths of many Gentlemen of undoubted Veracity; and who had the Opportunity of Observation at the Time, it is left with the Court, and to every impartial By-stander, whether the Panel could well have done more for the safety of the Burgh; considering that it shall also be proved, that during these few Minutes of Firing, accompanied with great Hurry and Confusion, the Panel gave several repeated Orders to the Men to refrain from firing; but observing these Orders prove ineffectual, he endeavoured to sweep them off the Field with all manner of Expedition.

The Panel marched on with the Men to the Guard-house, and as he thinks with Calmness and Deliberation, passing by the King's Troop in the Lower-market (a Thing generally attended somewhat inconsistent with Guide, especially such horrible Guilt as he is charged with). Upon his Arrival at the Guard-house, he drew up his Men there, finding a Sergeant to the Provost for Orders, which were brought, that they should wait on their Arms till the King's Troop pass; and some of the Men in waiting, offering and attempting to clean their Guns, but the Panel discharged it, and would not allow it to be done; upon Time a certain Person of Credit came up to the Panel, and asked if he had heard of To whom he made Answer, he had not; but the Person not being satisfied with the Answer, put his Finger into the Muzzle of the Panel's Piece, and after having rubbed it about, and after having also viewed the Lock, said to the Panel, I for you have not fired, and I am glad of it.

The King's Troop having passed the Guard, the Panel filed off the Men into the Guard, and ordered the Sergeants to keep them close till further Orders; and by all means not to suffer them to clean their Pieces. And at the same Time the Panel delivered his Carbine, loaded as aforesaid, at the Guard Door, to one of the Guard, neither entering the Guard himself, nor any other House, but went immediately to the Provost. Thus his own Piece was brought back loaded, and apparently without having been fired, and the other two Carabines which had got at the Guard were found upon his Return in his Carriage Box.

When the Panel went up to the Provost, some Person there pretense alleged he had fired the Panel first, which he contradicted, and bigd the Provost to send for his Piece, which he said he had delivered at the Guard as aforesaid, and that it would appear from inspecting of her, that she had not been fired: And the Piece being accordingly sent for, and brought up to the Council Chamber, and after being strictly inspected, it was agreed by all present that she had not been fired; and in this Confusion the Ball was loaded, in the Custody of the Magistrates along with the Carriage Box, containing the two Carabines, as aforesaid.

Though the Panel has a pretty important Piece at Stake, yet he rests in full Security, that he will prove to the Conviction of the Court every Article above related, and a good deal more in his Behalf to be hereafter mentioned. And if it should here be made Matter of Wonder, how such different Accusations are given of this Matter can consist together, seeing Numbers of People are supplied with the Guilt of the Panel, and that even good, well-meaning People, who were present upon the Spot, persist in affirming that the Panel was guilty, by both being himself, and giving repeated Orders to fire.

The Panel can give no other Account of this Matter than in this Way. A miserable slaughter was, Execution or other, committed within the Town.

The Guilt must be laid to some body's Door, and whether any Art might be used to by the heavy Load upon the Panel, in order to draw the Attention of the Multitude from another Point in View, the Panel shall not say, but stands upon the Honourable Court, and every candid Reader, who may happen to take up the Information, to look it to the Calabrine Mercenaries of the fifteenth and sixteenth of April last, Papers supposed to be published by Authority, where will be found a full and complete Account of the Matter, touching this misfortunate Panel, who was lying in close Confinement, without any Body being allowed Access to him, and of consequence, could have no Opportunity of vindicating himself, until after the Proceedings were deep-moored and was dead, and thus to cater the most vile, though well-meaning, Part of the People, the best beings, Relations of this Transaction are adorned with terrible wickedness, very proper to this unchristian Occasion, and

painted out with impudent Reflections, and quieter rhetorical Inventions very fatal to the Authors of their infamous Relations.

And indeed the Authors of these Accounts of the Matter, who they are, have the Impudence to affirm, and the Weakness to endeavour to fix upon the Panel, as an Instance of Provocation and Felony; thought, that the Panel had never the least Intent of the Guard as had with Ball and Bayonet, before they were sent on the Guard; And this worthy Author allows, that such doing was unprovoked; and as the Panel would not pretend leaders for a, notwithstanding that it is now, with his usual Candour, admitted by his Majesty's Advocate in his Information against the Panel, and dare not be denied, but that the Panel had Orders to fire the whole Men's Pieces loaded with Ball and other short, and even so far these Pieces smother, it is a Mob in case of Anger.

The Prejudices against the Panel being once actually rooted, it was not easy Matter to catch the guilty Mob, who are not able to look back and draw the true Springs and Causes of Things. For such is the Nature of human Passions, that if they are once actually moved, they will be apt to misguide the Understandings, even of Persons of Observation; and thus the Speech having been been created against the Panel, it grew into a Torrent, and drew like a Train of Fire, every one adding Fuel to the Flame, and Sparks originally increase into an mighty Conflagration. And so, in like manner, Things entirely of themselves innocent, may be multiplied into horrid Crimes and savage Barbaries.

It might also operate to the Prejudice of the Panel, that this Story was added in a very short Space, attended with great Commotion and Confusion. Words and Actions might be misinterpreted (whereof more particularly Notice shall be taken hereinafter) whereby Performances of Judgment might be misconstrued, and thereby fall into the vulgar Notions. And here it cannot be denied an useless Disposition in the Panel to give a Caution to all Gentlemen, who may happen to be called in Evidence upon this Trial, (for 'tis feared the Mob are not capable of this Advice) not to affirm Things upon Oath, except their Observations have been accompanied with all that Circumstance which their Sentiments warrant; Men should be careful, not to admit of, because any inconsiderate Rashness to the Prejudice of the Late or Fame of the Panel, cannot fail, for hereafter, to be attended with very painful Sitings of Remorse.

It was observed of the Panel, as a Thing that could not be denied, that upon many former Occasions, he had been employed on the first Part of the Panel to maintain the Peace of the City, by quelling of Mob and Tumults; and that he had never hitherto, during all the many Occasions on which he had been employed, ever discovered any imprudent Rashness or cruel Temper in the Exercise of his Command, but it is exposted his Person to very great Danger, rather than involve the City in Blood, or proceed to such Excesses, as the Law even would not entirely justify.

It was also observed in Behalf of the Panel, that it was no new Thing for private Men in the City Guard, who, though they are tolerably acquainted with Discipline, yet are not subject to the military Law, to take upon them to fire upon the Multitude, without any Order from their Commander, whereas the following Influences are offered, and which cannot be denied, to wit;

That at the Detachment of Mr. Wetherburn, as a Minister in the Week City Parish, a Party of the City Guard under the Panel's Command, did, one or more of them, in the Rear Rank, within the Well-gate of Edinburgh, while the Panel was marching on their Front, face about and fire upon the Mob, without any Order, and by which 2 or 3 several were dangerously wounded; and the late happened in a few Years ago, after the Execution of one Campbell, when a Detachment of the City Guard were attending the Corp of the Prison executed, which was delivered into the hands of the burghers of Edinburgh, by Order of the Magistrates. And the same Time happened in the Year one, at a Race in Leith, where the Party of the Guard was commanded by Captain Land, whereby several Persons were wounded. And another Influence was given, where the same Irregularity happened, within the few Months, at the Execution of James the Smith, when the Detachment of the City Guard was commanded by both Captains, Land and Fergusson. And, indeed, innumerable other Influences might be given of the Rashness of the Men in this Particular, which it is needless to confound upon, because they are not nearly known as the City.

It may also deserve Notice, that the private Men of the Guard might be tempted to fire without Orders, partly from Resentment, that *Rashness* before mentioned had cleared out on their Heads, and partly from being encouraged by the general Order they heard was given by the Magistrates to fire, in case of Resistance: For it is now found, that several of them were heard to say, before they went out to the Execution of Wetherburn, that now they had got Arms and Ammunition put in their Hands, and therefore would not fail to use them, in case they were attacked, or any Resistance made.

These Objections, in this humble thought cannot fail to operate in Favour of the Panel, in extenuation of the Label shall be attended with any Uncertainty or Doubt. And although the Panel is not so weak of Judgement, as to suppose that such Preliminary can prevail against justice and certain Facts, yet I doubt not, that at such a Time, when the Panel is led, such Objections will have Weight with the candid Jury.

One Thing more is to be observed generally, That as he has been employed but a few Months, and as he is not at the Mob, though never more known to proceed to Excesses, yet such Station of his may be the Cause of drawing Resentment from the lower Sort of the People against him.

The Panel has just reason to ask the Honourable Court for dwelling in long upon the Guard, but to say, from what is above noticed, and that this is the only Reason he has of vindicating himself from the Alpers and Impudence of his Adversaries, he may more be in Possession of his own Mind.

And now proceed to the Particulars in his Charge; And whereas it lies forth, That the Panel concerning a mob within and malicious



People of deposing, swearing, and mixing Numbers of his Majesty's party, at Subalterns of the City of Edinburgh, had added the several Mob and Things charged in the Indictment: The Panel must shew, that the Circumstances of the Case naturally exclude any Supposition of premeditated Malice, and Retaliation in the Panel, because in any Title to conceive, that the Panel should have retained any Malice against a Multitude of Persons, of whom he neither had, nor can be supposed to have had, any Acquaintance: And that it was admitted, that the Circumstances of the Case exclude any supposed long-pressed Malice, as it was urged, that in Law every wicked Action must presume Malice, though influenced by such Wickedness corrected.

To which it was answered in Behalf of the Panel, That the Circumstances of the Case, as laid in the Indictment, do even exclude any Possession of Malice accompanying the Acts charged in the Indictment; because every Action must be confined in the most favourable Sense, and therefore the Actions charged against the Panel, must also be confined to have proceeded from a Principle of Duty in the Panel, in maintaining the Peace of the Place, and in supporting the Authority of the Law, and the punishing of that Execution of them, which was committed to him by lawful Authority.

In the next Place, An Exception was taken to the Indictment, as not having been laid with sufficient Certainty; the Indictment so when expressing the particular Places of that large Street wherein the Guilt is charged to have been committed, whereby the Panel was precluded from making his Defence with Certainty: For had it been laid in the Indictment at what Places in the Street the particular Persons, affirmed to have been killed and wounded, were to be killed or wounded; the Panel might have had an Opportunity of proving, from the Circumstances of his situation at the several Periods, that it was impossible that such Wounds could have been received from his Hands: And still it may be true, that such Part of the Indictment as charges the Panel's Actions as first, would be of unavailing Influence, and reached over the whole Circumstances of Guilt charged in the Indictment, yet in actual Execution made by the Panel was charged against him in Order to him, such Proof of Innocence, whereas the Panel pleaded an Opportunity, might have afforded him a Defence against such Part of the Indictment as charges his own Firing and Killing.

To this it was answered by his Majesty's Advocate, That the Lybel was as particular as the Law required, defending the Street where the Execution was committed, which is all that the strictest Scrupulousity will require in the Case: Because minute Circumstances cannot be known to the Professor, or certainly determined, but by Proof upon Trial; and that every Circumstance of the Panel's own doing must be known to him: And therefore, if from the Position or Situation as which he was at the Time of the Firing, the Panel can shew that it was impossible he could have killed the Person whom he is charged to have killed; by determining and proving these Circumstances, he may have Advantage from them, but cannot object to the Professor, that he did not minutely describe his Situation, which was not known to him; and that by the defence of which, perhaps erroneously, the Professor might mislead an unjust Occasion to a Criminal to escape Justice.

It which it was replied for the Panel, That that it is true that, in most Cases, the defending the Street where the Guilt was committed, would be a sufficient Defect, yet that, in the present Case, where it was laid in the Indictment, That at a Crowd or Multitude, various Shots were fired by different Hands, and thereby Wounds given; in every necessity to describe the particular Place of the Street where such Wounds were received, in order to form a Judgment from whose Hands these Wounds had proceeded: The Panel might have been justified, or in the Act, and the Wounds received may have proceeded from the Shots of others: That the Panel knows his own Position and Situation, and can prove them; yet such Proof cannot be at all times, nor be received by the Court as the Proof of Facts only, because it would be a simple Narrative, which could not be admitted of, nor would we apply, unless the particular Places of the Street, in which the Wounds are laid to have been received, had been described to him; a Situation which the Panel cannot be supposed to know; who is the Professor must be supposed to have known it, being the best Information that led him to know of the Wounds received, must necessarily upon Inquiry have examined him at what Places of the Street such Wounds were received, being the Matter and Things laid in the Indictment, are charged to have been committed at High-daylight, in Presence of Multitudes: And that the Panel is fully in Possession of the good Disposition of the Huzerick Professor, to lay a fair and certain Indictment against every Panel, yet it must be admitted, that all Indictments ought to be laid with all Accuracy and full Description that the Nature of the Thing can admit of: And, as to each Part of the Answer for his Majesty's Advocate, as far as that fact particular Disposition of Place, it perhaps erroneously described, might mislead an unjust Occasion to the Panel to escape Justice, it is allowed, That such erroneous Description, that could be so mislead the Trial, because the fact Disposition did not not be proved, it would not vary the Case, providing the fact of killing was proved against the Panel, because such Description of Place, but a Circumstance only, and not to be proved by the Professor, but for the Jury to consider, being material for the Panel to know, in order to lay his Defence before the Court.

It was on the next Place offered a Defence for the Panel, That the Resistance of the Mob was to resist, and the Attack of the City Guard so violent against them, in beating, bruising, and wounding the Mob, as has been above mentioned, whereby they were in the lawful Execution of their Office, committed to them by lawful Authority, that such Resistance and Attack must have justified the Guard, in repelling the Violence of the Mob; since such Proceedings by the Guard were stated in support of the due Execution of the Laws, which the Mob were highly Criminal in disturbing: This Argument was offered for the Panel, was not only consistent with the best Sense of Law, but agreed to by every Judge present, and the President of the Court, particularly that in the Year One thousand five

hundred and ninety-two, it appears from the Books of Adjournal, That James Gordon M'Intosh, at the Execution of a Captain, died, with many others his Assistant, armed with Guns, Swords, and other small Weapons, shot five or six shots, whereby one Alexander Tait was killed dead upon the Spot, amidst a numerous Crowd, which the Alarm of Noise and Tumult had drawn together, and whereby only part can be supposed to have come there with Intention to resist the Sheriff; and the fact James Gordon and the others his Assistant, being indicted for Murder, the Lords intended that Defence to him, relevant to elude this Indictment, viz. That he, in the Execution of a Captain, having his Sword displayed, was by force of Arms intended to enter the House of Lords, by the Persons within that House, and that they did threaten and menace the M'Intosh and his Assistant, and that they threatened to raise the Country, and that the Country did accordingly rise, and defeat and surround the M'Intosh, either in the House, or without the House, the said Country People being armed with Guns, Swords, and other massive Weapons.

Here your Lordships perceive, that the Court justified the M'Intosh in shooting amongst the Mob, and killing, because the Mob was in the House forcibly hindered him from coming, and threatened an intended harm, being armed with massive Weapons, and the present Case is more favourable in behalf of the Panel, who acted by an full Authority, as first as Gordon in the other Case, who did with supporting the Execution of the Laws, as well as Gordon was; with this Difference upon the side of the Panel, That he was not only hindered and menaced in the Execution of his Duty, but he and his Guard were actually attacked, beat, bruised, and wounded, as has been above-mentioned, and whereas a strong Proof shall be brought, against the Mob in the present Case, were not only armed with, but in their Attack upon the Guard, made use of, Big Staves, of Two or Three Pound weight, which must be allowed to be very invasive Weapons; and therefore the Panel labours, thus the Defence offered, furnished in the present Case, with the best Advantage as far as it is allowed him, than that which was taken in Gordon's Case: Only the Panel must do the Justice to his Majesty's Advocate, as to acknowledge, that this Proceed was not without ground in the Debate; but when the Record is inspected, will be found to stand in the precise Terms as above-mentioned.

This was in the former Debate, a Proceed of the Court offered, as against the Panel, who is the Panel, with Submission, apprehends makes for him, namely Captain M'Intosh's Case, some time after the Revolution: Captain M'Intosh was indicted in the One thousand five hundred and twenty-two, for having killed in the One thousand five hundred and eighty-eight, he being charged with the Obstruction of an Officer of the Peace of the Council, and several Privy Counsellors, whom Two were Officers of State; and the Bailiffs of Edinburgh, having gone down to the Common-law, with a Herald and Purveyor, with their Coats of Arms displayed, to put the Order of Privy Council in Execution, notwithstanding which, Captain M'Intosh would not deliver himself up, but retired with the Men under his Command to the Abbey, and defended himself, and fired upon the Bailiffs, Heralds, and Port vases; that several Persons died upon the Spot, and wounded a great many others.

The Defence put for Captain M'Intosh was, That the keeping of the Abbey offered to him by order of the Privy Council, which he was obliged to maintain so long as the Traik of it was committed to him: That as to the Order of Privy Council, to deliver up the Prison, it was contrary to an Act of Parliament, passed the Sixth, whereby any General Warrant, for putting the Prison of any Man in Ward, except where that Warrant was issued by two Officers of State, whereby the Council, viz. Minister, or Secretary or some or some, which had been practised in M'Intosh's Case, was prohibited and discharged.

The Lords, after a very learned Debate, did sustain these Defences to Captain M'Intosh, viz. That on the Sabbath Night, or shortly before, a Mob did meet in several Places, in great Numbers, on the Sabbath of their day, to declare to John M'Intosh their Resolution to trouble the Port on his Guard, and so pillage the Abbey, relevant to resist to an arbitrary Punishment.

But your Lordships perceive, that the Court sustained a previous Intentionally declared, that they would trouble the Panel on his Guard, and pillage the Abbey, sufficient to moderate the Punishment; it is true, are the Laws towards any Person committing Hostility in Defence of his Guard: And then the Lords sustained, by following Defences only, to elude the Label altogether, to wit, That the Mob did, in a tumultuous manner, come down the Abbey stairs, with Men and Fire Arms, and did beat some of the Panel's Commandants, and he is desired to stand, they notwithstanding advanced to go, that the Panel could speak with them, and after he had tried them to surprise, or in another hazard, they, notwithstanding themselves, still refused to a View.

The Apples are in the present case, viz. The Panel many Times exhorted the Mob to stand off, some of them of which, they still persisted upon him, he many times advanced to them, when Hazled, threatened to fire upon them if they would not keep off, his Commands were not only disobeyed, but broken and wounded, all who he is desired to be proved.

Another curious Intention, in the Debate to your Lordships, which strongly supported the Plea of the Panel, because it was a Judgment of your Lordships pronounced but very lately, after the most solemn Declaration of the Court, and whereas the Panel is informed, the Court was unanimous; and which Judgment seemed to be of that Importance, as to induce the Court to reverse the Proceedings of the High Court of Admiralty, after a solemn Trial by Jury in that Court; a Vindict returned, finding the Lybel proved in, and the Defence not proved; and a sentence of Death pronounced by the said Court of High Court of Admiralty.

The case upon the Admiralty is, viz. A Corporal did a private Contract at a Dutch Merchant's Request were intended to bore the Admiral for Murder, for that they both upon the High Seas, killed High People, younger, or Blonnie, in drinking, being with a Barpter in the Boat, and afterwards throwing him into the Sea, whereby he instantly died.



The Defence pled for the Panels, was this, That the Panels were by Military Order, appointed to attend the Officers of the Customs in seizing of Goods by Law made feasible; and that the Panels being in a Boat, upon the Seas, along with the Custom-house Officers, in quest of such Goods, the Panels killed did come up with them in another Boat, with others in Company with him; and that *Fraser* the deceased jumped into the Boat, where the Panels and the Custom-house Officers were, and endeavoured to seize hold of their Arms; which was both a Resistance and an Attack of the Custom-house Officers while in the Execution of their Duty.

Upon the other hand, it was pled against the Panels, That *Fraser's* jumping into the Boat, was with an Intention to make Resistance, but rather to save his own Life from the Threats of the Panels, their Pieces having been aimed at him; that those in the Custom-house Boat could have no just Apprehension of being assaulted by Mr. *Fraser*, he having no offensive Weapon about him whatever, and being the only Person who offered to get into the Custom-house Boat, in which there were several Persons well armed.

The Judge of the High Court of Admiralty admitted of the Panels' Plea, in this Manner only, *namely* the Defence of Self-Defence proposed by the Panels, that the killing of the said *High Fraser*, by them, or either of them, was as the necessary Defence of their Lives, and repelled the whole other Defence proposed for the Panels.

The Jury returned their Verdict, finding the Panels both guilty, art and part, of killing the said Mr. *Fraser*; and finding it not proven, that the killing of Mr. *Fraser* was in the necessary Defence of the Panels' Lives: Upon which Verdict returned, the Judge sentenced both the Panels to be hanged.

The Proceedings of the Court of Admiralty were had before your Lordships for a Review, which, as believed, is the single Instance wherein it was ever contended, that the Proceedings of the High Court of Admiralty in Matters Criminal could be reviewed by any other Court.

Notwithstanding of which, your Lordships were pleased to reverse the Sentence of the Judge Admiral; no doubt, upon supposed Error in his Proceedings; because the Verdict of a Jury, pronounced upon Evidence, cannot be reversed; and in consequence of which Judgment of your Lordships, the Panels were set at Liberty.

Now the Panel is advised, that such Judgment in your Lordships could stand upon no Foundation other than this, *viz.* That your Lordships had reversed the Judgment of the Admiral as erroneous, in not sustaining this Defence to the Panels: That they were misled by Mr. *Fraser* deceased, while they the Panels were in the Execution of their Duty.

And as the degree of Resistance offered by Mr. *Fraser* to the Panels, was by the Panels themselves maintained to have been no higher than what has been fit to use to your Lordships; the said unanimous Judgment of your Lordships pronounced after many solemn Deliberations, does by consequence shew, that it was your Lordships unanimous Opinion, that a very small degree of Resistance of Persons in the Execution of their Duty, will justify the Persons resisting in the Act of killing the Resister.

And if that was the solemn and unanimous Opinion of the Court in a Case so recent; such sort of just Judgment afford a strong Argument to the Panel, that he and his Guard were misled, while in the supposed Execution of their Duty, in being beat, wounded, and bruised by an unruly Mob, who, there was good Reason to apprehend, intended to defeat the Execution of the Criminal.

To this last Case, the Panel met with an other Answer from his Majesty's Advocate, but this, That the Panel cannot plead the Benefit of his *Café*; because he neither does, nor can say, that the King proceeding from him or his Order, was necessary for procuring the Execution of that Trial that was committed to him: His Majesty's Advocate does admit, that where a Person has by lawful Authority Weapons put into his Hands, to be employed either in defence of his Life, when attacked, or in support of the Execution of the Laws, or of the Property of the Crown, or Property of the Subject; such Person may use those Weapons, not only when his own Life is in far in danger that he cannot probably escape without making use of them, but also where there is imminent Danger that he may by Violence be disabled to execute his Trust: But without seems to contend, that the Panel was under none of those Circumstances at the time he committed the Guilt charged upon him in the Indictment; for that at the Execution of the Criminal was over before the *Kaffie* began, or any Resistance was made to the Panel, and the Guard under his Command; and that being the Case, the Panel can plead no other Defence, than such as might arise from his being put under the imminent Danger of his Life.

But, with great Submission, These Positions of his Majesty's Advocate are asserted without any Authority, and, as would appear, not only in plain Opposition to the Laws, but to the many Precedents already offered in behalf of the Panel, for it is hoped it must be admitted, even by his Majesty's Advocate himself, and is indeed admitted by him, that the Panel was once in the full Execution of his Duty, and was obliged at all Hazards to support the Execution of that Criminal who was committed to his Guard; for surely then, the Execution of the Panel's Duty could never be said to have been at an end, until once the Criminal was fully executed to Death, and as such ordered to be cut down by lawful Authority; unless it shall be said that it was the Panel's Duty, the Moment the Criminal was hanged up, to let him instantaneously be cut down, rescued by the Mob, and brought to Life again; which seems to have been their plain Intention: For it seems to be confessed upon all Hands that there was danger of a Rescue, which seems to have been the occasion of all this extraordinary Apparatus; and for preventing of which 'tis admitted, that the whole Guard was first run with their Pieces loaded, and even with Orders to fire at all Ventures in Case of such Rescue. Was not then a necessary part of the Panel's Duty to proceed and support the Execution of the Criminal, when hanging by the Neck as the Act, until such time as he was cut down by lawful Authority, as supposed fully dead?

And 'tis certain that in answer to the Panel's Message, Orders were brought from the Bailiffs that he should yet hang a quarter of an Hour, which surely it was the Panel's Duty to see obeyed, and which Order of the Bailiffs the Mob nevertheless did resist, and cut down the Criminal long before that time was elapsed, and which the Panel was in duty bound to oppose, and from their Contrivance it is offered to be proved, all the Violence on the Mob proceeded: But even it with any Justice affirmed, but that the Panel was in the Execution of his Duty, while he and his Guard were standing upon the Spot under Arms? Is not every Person in the Execution of his Duty while he is either going to, or coming from any lawful Expedition? And therefore it seems impossible to maintain, but that the Panels, and the Detachment under his Command, were in the lawful Execution of their Duty, until they had once turned, and were dispersed and dismissed from Duty, at which time only they were reduced under a private Capacity.

And even the Protection of the Hangman, who had actually received several Wounds and Contusions, and was in danger of being put to Pieces by the Mob, was a Part of the Panel's Duty: For tho' he is a Minister of the Law (which admits), yet he is a necessary One for the Society, and he, under a great Necessity of being protected, from his being in obedience to the Sentence of the Mob, and at least in Humanity, must have such Protection afforded him, as to defend him from having his Brains knocked out.

How then can it be said, in any Sense, that the Panel was in such Situation, that he could only plead the Benefit of Self-Defence? It is a known Rule in Self-Defence, that a Person invaded must retire as far as he can with Safety: But if that is the Case of a City Guard (maintained at great Expence) that to learn as it were invaded, they must immediately submit themselves to their Heeds, it will be apparent, that they are but kept up for very useful Purposes.

As the first time the Panel can with great Cause say, That he is far from being of that Disposition of Mind, as to be ready to take the Advantage, which the Law might afford, against an unruly gally Mob, whom he has given Proof upon many former Occasions, as much be allowed him; and whereas even the poorest Cafe will be an Indulgence in his Favour, it he meets with Justice from the Evidence: But with all, he must be allowed to observe, that it would be a dangerous Position, that a Guard kept up for the Maintenance of the Peace of the capital City of this part of the Nation, when they are assembled together upon Duty, should be allowed to plead no higher Privilege, than that of Self-Defence as the *Blackst* Sent.

And whereas any Lord Advocate seems only to admit, That a Person who has Weapons put in his Hands by lawful Authority, for the Defence of the Property of the Crown, or Liberty of the Subject, may only use their Weapons when he is in imminent Danger of having the Execution of his Trust defeated by Violence: If such is the Case, the Execution of Duty will become a very perilous Point; and 'tis apprehended, that few Folk will be found of it, if they can possibly live without it, and of Consequence, such Doctrine must very much discourage any Persons from offering their Service, either to the Crown or Commonwealth.

And as the Supreme Executive Power is by the Constitution vested in His Sacred Majesty, our Sovereign, chooses his Lord Advocate, who, by his Office, is so connected for His Majesty in all Causes, will, no doubt, have due Consideration, how far an Argument is to be pressed against the Panel; which, by plain Consequence, must tend to weaken, if not defeat, the Execution of the Laws.

One would rather be inclined to think, That where a Person has the Trust of the Execution of the Laws committed to him, the smallest Resistance to his Trust, as such, is a quite Affront, and that every Opposition of such Authority is a mortal Injury to the Nation: as much be above the Laws, and the Life of the Law; to which, as much as Good is employed, is of greater Value than the Lives of any One or Number of the Individually, and to ought to be defended at all Perils.

His Majesty's Advocate upon this Head, in his Information against the Panel, does assume this Fact, That the Mob or Multitude assembled at the Execution, were behaving themselves peaceably; and from such Assumption to draw his Inferences against the Panel, which seems to run high enough. The Panel very well knows, that no Order whatever will justify the Person executing that Order, if such Order appears evidently to be unlawful, and yet in Cases which appear doubtful, an Order from a Superior will bear it out: Whereby, more especially in Military Matters, as such other Things as are possible.

But, with a Submission, This Reasoning upon the Mob being supposed quiet and peaceable and innocent, as contrary out of the Case; for, as we are now upon Relevancy, the Facts must be supplied, and then the Argument considered in that View: And as the Panel does aver, That he and his Guard, while in the Execution of their Duty, did meet with strong Resistance from the Mob, in so much that many of the Men were greatly beat and bruised: And of that was the Case, it was an unlawful Invasion of Persons, to whom the Execution of the Laws were committed, and so must be by them as support of those Laws, referred to a justly great Length, except it shall be maintained, that in the Situation of the Panel and his Men were polled, they could plead no higher Privilege than that of self-defence, which, with great Respect, cannot be maintained, but rather seems to be a Contention; because they have not only their own Defence to take care of, but also the Defence of the Peace and Quiet of this City, and of the Execution of the Laws, and that due Obedience was given to them.

In a Word, upon this Head, the Panel's Argument is not only supported from the Nature of the Thing, because a Man who fights with the Laws upon his side, fights with great Advantage against those who are fighting against the Laws; and for that reason, if a Man were to fight a Duel, the Laws would be the best second; but also, 'tis believed, that no Instance can be given in this Country, or in any other of civilized Policy and Government, where a Person, proceeding to what Examines whatever against a Person who had assaulted him,



age, while in the due Execution of the Law, ever suffered the Pains by-  
beheld.

My Lord Advocate seems to insinuate, as if the Reading of the Riot-  
Act had been a Duty incumbent upon the Panel, whereby the Innocent  
Part of the Mob would have had time to have taken care of their own  
Safety: But then his Lordship will be pleased to consider, that no Person  
is by Law authorized to proclaim that Act, either to a Justice of Peace,  
Sheriff, Mayor, Bailiff, or other Head Officer; and no Person, under  
any of their Characters, was left with the Unfortunate Panel, but he was  
abandoned and left to grapple with Occurrences in the best Manner his  
own Wits could suggest to him.

But then the Reading of that Act could not answer the present Ex-  
igency: For the Reading of that Law may perhaps sometimes answer  
the End for which it was intended, namely, The preventing the Detention  
of any House or Meeting-house; but if the Panel, in the present  
Case, should be supposed bound to have kept his Hands across for the  
Space of one Hour, after the Reading of this Act, then it is certain that  
the Mob might have prevented the Execution of the Law in far less Space.  
And it is certain, that by the Act, the Mob is not put in Contempt, or  
exposed to the Penalties of it, until once they converge together one Hour  
after the Reading thereof.

My Lord Advocate is also pleased to hint, as if the offering of this  
Plea in Behalf of the Panel, founded upon the Rebellion of the Mob, was  
in some sort inconsistent with another to be hereafter mentioned for  
him, viz. his Innocence of the Facts: But, no doubt, my Lord very well  
knows, that by the Laws of Scotland, there is no Inconsistency in such  
different Pleas. And this leads to the Consideration of the Exculpation  
offered for the Panel, arising from his Innocence of the Guilt, and the  
of the Action, Command, or Order charged against him in the Indictment.

And in the first Place, as to such Part of the Indictment as charges  
him with either having fired himself, or having given Orders to fire,  
whereby *Cheris Haywood* was killed: though it is indeed true, that an  
inimical, from the Nature of the Thing, for the Panel to prove an absolute  
Negative; because, as His Majesty's Advocate very justly says, if  
the Charge in the Lydell is proven, to wit, that the Panel either did  
fire, or gave Orders to fire, at this Time himself, no negative  
Evidence can prevail: said it, yet as to this Point, the Panel offers to  
prove, what the Law calls a circumstantial Negative, which in a  
good Measure relieves an Affirmative, viz. That at this Time, when  
*Cheris Haywood* died, and gave the Wounds charged in the Indictment,  
wherein it is supposed he died, the Panel, as has been above recited,  
was in the following Situation, that is to say, he was pointing his Piece  
with his Face towards the West Port, threatening the Mob, that if they  
would not keep off, he would fire; and that immediately, upon this Ex-  
pression, a private Constable of the Guard came up from behind him,  
and discharged his Piece, by which it will be proven, *Cheris Haywood*  
received his Death Wounds; because it shall be proven, by Persons of  
undoubted Veracity, that he was hard by the Panel all the Time, that  
they not only observed, that he did not fire his own Piece, and gave no  
Order for firing; joined with this other Circumstance, that no Proof  
will appear, during the whole Session, that ever the Panel made use of  
any Firelock, but his own; and that his Piece, when returned to the  
Panel, was found loaded, and in such Condition, that it was even con-  
fided in the Magistrates themselves, and many others, not to have been  
fired, with this further Addition to exclude that farther Part of the Charge  
in the Indictment, of the Panel's having made use at any Time of any  
other Piece than his own, viz. that he carried his own Piece in his Hand  
the whole Time, except during the Space of Prayer above-mentioned,  
when he gave it to his Sergeant: And it shall also be proved, that there  
was but one Shot fired at this Time, at which *Cheris Haywood* is sup-  
posed to have received his Death Wounds. And as to the other dropping  
Shots that are charged in the Indictment to have followed upon this first  
shot, if from the Evidence adduced, the Panel's Proof shall appear to  
be most pregnant, that he gave no Orders to fire at this Time, then he  
is not chargeable with the Consequence of such Firings.

And this further Circumstance must strongly operate in favour of the  
Panel, to wit, that, at the Time of this supposed Order to fire, the  
Men were not drawn up in a regular Line or Band; but were either  
straggling, mixt with the Mob, or in a circular Form, surrounding the  
Scaffold or the *Gray-Market*, which excludes all Possibility of any sup-  
posed general Order to fire; unless it be supposed that the Panel was a Mad-  
man, forcing any Compliance with such Order must have led the Men to  
fire each in his opposite Neighbour's Breast, and a great many into that  
of the Panel.

It is not altogether impossible that the Panel's Expression of the Word  
*Fire*, might have erroneously induced this Fellow that came from behind  
his Back (who of himself perhaps was too forward to embrace such Or-  
der, had it been given) to discharge his Piece: And if the Person firing  
was guilty of an Error, or of a Misconstruction of Duty, the Panel is  
not chargeable thereon, seeing that every Person that has the least  
Knowledge of the Exercise of Arms, must know, that he is not to re-  
sist as Order to fire from Impetation, but from some known certain  
Rule of Discipline.

And for this Reason it is, that the Panel takes it to be a very wise  
Part of the Military Institution, to avoid Misconstructions, That no Man  
receives Orders to fire (especially when he is telling, or shouldering his  
Arms) but upon a precedent Series of Exercise attended with great So-  
lemnity, to avoid Mistakes greater or less indeed according to the Na-  
ture of the Operation.

Sometimes indeed, as was observed in the Debate on the Side of his  
Majesty's Advocate, Persons will, very justly, fire upon so short Adver-  
tisement as the Tuck of a Drum, or 'till to believe, that is never practis-  
ed, but during the Noise or Tumble of Battle; where it is supposed that  
the Voice of verbal Order cannot reach the Men; and then this Tuck  
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of the Drum, or any other Signal of firing, must be previously adverti-  
sed to be the Signal of such Action.

Another thing falls also to be noticed here, touching this first Charge  
in the Indictment, and which may be even taken through the whole;  
That when two or more Persons are nigh together, juggling their Pieces  
at the same time, it is not easy for the Sharp Eye, especially if at any  
Distance, to determine from what Piece the Fire proceeded; and of this  
Point military Men, best acquainted with the Exercise of Fire Arms, can  
give the best Account.

And lastly, upon this Head, the best Conjecture the Panel can make,  
is this, That upon this first Fellow's firing, without either Order or Ex-  
ample from the Panel, his Commander, the other dropping Shots that  
ensued, proceeded from other men of the Guard, who encouraged  
by this first Example, discharged and discharged their Pieces amongst  
such Part of the Mob, as they respectively supposed any Injury or In-  
vasion upon them had proceeded.

The next material Circumstance, charged in the Indictment, is that,  
touching the Panel's Behaviour at the *Wyndhouse*; where it is charged,  
That he commanded the Men to face about, and fire upon the People;  
and that at or about the same time, he fired a Musket or Firelock that  
was in his own Hand, having either released, or caused to be released,  
his own Piece, or taken another out of the Hand of one of the Guards;  
and that upon this second Example and Command of the Panel's, several  
others of the Guard, under his Command, did fire; whereby the Persons  
mentioned in the Indictment were killed and wounded.

As to which Part of the Charge, the Panel offers the following Proof:  
And First, As to Order, he shall prove by Multitudes of Persons near  
him at the time, and who were narrowly observing him (and Orders are  
generally given with an audible Voice) they heard no such Order given,  
nor heard no Expression of the Panel, that, by the most remote Con-  
jecture, could have been interpreted as an Order to fire: And here the Pan-  
nel's Memory, upon this small trifling Reflection, cannot divine what  
could have given Occasion to any such Conjecture, that he gave an Order  
to fire at this time. And here also the former Observation falls to  
be noticed, touching the Solemnity of an Order for firing.

And As to the Action of firing charged against the Panel himself, for  
firing at this time, the Panel offers to prove the very Contrary, at least,  
that it was a Centinel of the Guard, who gave the first Fire at this time,  
which was the Shot at *Roderick's Claydon*. And the Panel is informed,  
as has been above noticed, that at the time of taking the Precautions,  
an Order was made to the Magistrates to single out the Fellow, if they  
would suffer the Guard to be drawn out, who fired that Shot towards  
*Roderick's Claydon*, by which the two or three People fell. And further,  
The Panel offers to prove, upon this Head, not only that this Fellow  
was the first Person that fired, without any Order from the Panel cir-  
cumstantiated, as is above noticed, but also by many Persons of un-  
doubted Credit, that they could not observe the Panel fire, or dis-  
charge any Piece himself, during the whole Time that this Firm was sup-  
posed to have continued. And here the Panel could evidently call up  
many Inconveniences to your Lordships, that must necessarily be implied,  
and many Presumptions that strongly exclude any supposed Order or Ex-  
ample of the Panel at this time; but does not think it altogether fit  
to present to mention them at present.

As to the taking a Piece out of another Man's Hand, and firing of it,  
such Actions was a remarkable Occurrence, and must have fallen out un-  
der Observation, and to the Panel can say nothing about it, but leave  
it to Evidence, with this only Observation, That, as it was a notable  
Event, it will operate almost as strong in the Negative as in the Positive.  
And it must be left to the Jury to balance the Evidence, if a Contem-  
ptary shall appear, and so lean on that Side attended with the greatest Credi-  
bility, taking the known Rule of the Law into the Consideration, namely,  
Favour to the Panel in case of Doubt. Only this Observation falls to  
be made to your Lordships, That the Circumstances of the Case call  
loud for the Panel's being allowed a Proof upon this Part of the Indict-  
ment.

The Panel does agree with His Majesty's Advocate, That no negative  
Evidence can take away a positive Proof; but the Panel humbly  
thinks he has offered a pretty circumstance one: And as my Lord Ad-  
vocate seems to admit the Necessity of a Proof on both Sides, so the Pan-  
nel will not labour that Point with your Lordships, not doubting but  
you will allow him in general, to prove what he can, to exculpate him  
from the Guilt laid in the Indictment; and that your Lordships by your  
fourth and fifth will allow him as much Scope in that Particular, as any Pre-  
sident of your Lordships Court can authorize. And there are several  
Instances, and too very particular one, wherein great Latitude was al-  
lowed, both as to the Circumstances precedent, concomitant, and even  
subsequent to the Acts charged in the Indictment.

Some general useful Reflections might be made, but this Paper is al-  
ready drawn out into too great Length, and as the Panel has learned  
judges, and a differing and candid Jury, the last needs be fall; because  
his supposed they will naturally occur to those interested in the Trial;  
and no doubt such will lay aside all Prejudices and Prepossessions; and  
will never once think of, or utterly deride the Consequences of popular  
Rage or vulgar Clamour.

If the Panel is guilty of the Charge in the specific Way and Manner  
it is laid against him in the Indictment, he is of Opinion himself he de-  
serves to suffer. But if upon the other hand, it shall come out that he is  
entirely innocent of the Blood of those Men whose life is charged, he  
thinks his Case deserves singular Commiseration. Because, if Words and  
Impetuosity, Loss of Employment and Breed, Obloquy, and Re-  
proach of Blood-guilt, and Malice, and, of Consequence, Loss of Cha-  
racter, be Calamities in human Life, then he has had as great a Share  
as others as ever attended Innocence. *De Jure Victor,*

*Jo. Graham, Jun.*











*John Ritchie, Servant to Mr. Archibald Murray, Advocate, aged Seventeen Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, the Deponent was present at the Execution of Andrew Wilson; and after the Criminal was cut down, he saw and heard about Three Shots fired, and then he heard a Fourth Shot, which was by Captain Porteous, and that he saw a Man fall down, but the Deponent imagined it was from the Preface of the Crowd, that there was very short time between the Shots, but that which was by Captain Porteous was the last in order. That after the Criminal was cut down, the Guard drew towards the North-side of the Scaffold, that the Deponent was standing within Two or Three Yards of the Foot of Robery's Cloak, when he saw and heard the firing; Deponent, he heard the Panel mention the Word, Fire, before the firing; Deponent, That the Panel was, to the best of the Deponent's Remembrance, standing as far West as the Gallows, but he cannot be very positive; the Men and Crowd was such, that he could not very distinctly discern. Deponent, That the Shots mentioned by the Deponent, first Three, and then a Fourth, was the last he heard that day. *Capt. Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*John Ritchie.  
W. Pringle.*

*Thomas Crawford, Servant to Thomas Frith, Brewer in Edinburgh, aged Twenty-two Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, the Deponent being upon the Causey on the South-side of the Scaffold, saw the Panel, who was then standing upon the North-side of the Scaffold, fire the Gun that was in his Hand upon the Multitude, the Point of the Piece being directed Westward, and saw the Fire and Smoke issue out of the Muzzle of the Gun, that was in the Panel's Hand. And further deposed, That the Panel was standing at the North-side of the Scaffold, and at that end of it, which is next the *Ben-Caple Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*Thomas Crawford.  
And. Fletcher.*

*James Neilson, Gardener in the Red Clof of Edinburgh, aged Thirty-one Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, the Deponent being standing within the Foot of a Tumple near the *Black Well*, saw the Panel who was then standing upon the North-side of the Scaffold, a little to the East-ward, where the Gallows was; and saw the Panel advance West-ward, towards the Multitude, with his Firelock in his Hand, moving it to and again, as if he had been beating back the People; and at the Third or Fourth Motion, saw the Panel fire the Piece that was in his Hand upon the Multitude, pointing it Westward, and saw the Smoke issue out of the Muzzle of the Piece. That this was the first shot which the Deponent heard, which was soon followed by others; for the Deponent observed the Panel after he had fired his Piece near the *Ben-Caple*, to the Soldiers, and saw five or six of these Soldiers advance and fire upon the Multitude; and soon thereafter when the Multitude were beat off, the Deponent saw a Boy with black Hair lying within ten Yards of the Tumple where the Deponent was standing, and saw four other Persons lying at different Places upon the Street; and saw the full mentioned Boy bleeding at the Ear. *Capt. Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*James Neilson.  
And. Fletcher.*

*William Gordon, Baker, and Servant in the common Bakehouse in Hayles Clof in Edinburgh, aged Twenty-one Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, the Deponent being at the Head of the Tumple at the back of the *Black Well*, did from thence for Captain Porteous, Panel, who was then upon the North-west Corner of the Gibbet, wear his Firelock to and again; and thereafter saw the full Firelock while in his Hand, go off, and saw the Fire and Smoke go out at the Muzzle of it; and thus was the first shot which the Deponent heard that Day, but heard several Shots thereafter, and that the Shot which the Panel fired, was soon after the deceased *Andrew Wilson* was cut down. *Capt. Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*William Gordon.  
And. Fletcher.*

*James McGill, Servant to Colin Aiken, Wright in Edinburgh, aged Twenty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, and soon after the deceased *Andrew Wilson* was cut down near the Gibbet; the Deponent being upon the Causey of the North-east end of the Scaffold, began to take down the Scaffold, and did then hear the Panel, who was towards the North-end of the Scaffold, fire several Times to the Soldiers under his Command, Fire and be damned, and at the same Time saw the Panel advancing West-ward, with his Piece pointed in his Hand; and immediately after hearing the forlaid Words, he heard several shots go off, and when the forlaid Words were spoken by the Panel, he was passing by the Deponent West-ward, about a Yard or two distant from him. *Capt. Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*James McGill.  
And. Fletcher.*

*David Brown, Servant to Colin Aiken, Wright in Edinburgh, aged Twenty-eight Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and*

*Place labelled, and after the deceased *Andrew Wilson* was cut down, from the Gibbet, the Deponent being standing at the East end of the Scaffold, assisting to pull it down; and thus saw the Panel going along the North-side of the Scaffold Westward, and heard him give Orders to the Soldiers under his Command to fire, but does not remember the particular expression; and immediately upon the Orders being given as aforesaid, he heard several Shots; and when the Deponent heard the Panel give the forlaid Orders, he was about the Distance of the Breadth of the Scaffold from him. *Capt. Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*David Brown.  
And. Fletcher.*

*Matthew Kid, Servant to Thomas Aiken, Deacon of the *Madrass* in Edinburgh, aged Thirty-three Years, or thereby, married, solemnly sworn, purged of Malice, and partial Council, examined and interrogated, Deposed, That the Time and Place labelled, and soon after the deceased *Andrew Wilson* was cut down from the Gibbet, the Deponent being standing upon the plain Street near *Capt. Todd's Shop*, he saw the Panel going from the Wall at the *Ben-Caple* Westward, and saw him fire the Gun that was in his Hand, and thereafter give Orders to the Soldiers under his Command to fire; thereafter he saw him call to the full mentioned *Ben-Caple*, their Faces, and saw the full mentioned *Ben-Caple*; and that the Shot fired by the Panel as aforesaid, was either the full or half of said Shot, which Shot he fired standing to the North-east of the Scaffold, half-way 'twixt the *Ben-Caple* and the *Ben-Caple* Well, and that when the Panel ordered the Soldiers to level their Pieces, he was some Yards nearer the Foot of the *Ben-Caple* *Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*Matthew Kid.  
And. Fletcher.*

*James Marshall, Servant to Colin Aiken, Wright in London, or thereabouts, aged Thirty-two Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, after *Wilson* was cut down and put in his Coffin, there was some Strife thrown by the Multitude upon the Panel, upon which he heard the Panel to order the Soldiers to turn in, and immediately heard him give the Soldiers Orders to fire, and be damned; and then saw him advance two or three Paces, and saw him Gun cocked, and his Thumb upon the Trigger, and saw him fire the Gun; and immediately before he heard any other shot, he saw a Boy fall near a Coppernitch's Shop, to the North-east of the Place, from which the Panel fired his Gun. There were six or seven more shot after the Order was given; and then he saw three Men and a Woman fall, one of which had a Wound in his Forehead, and another in the side of his Head. That after the Soldiers stood as aforesaid, he heard the Panel say to one of the Soldiers, That if he did not fire, he would take his Piece from him. Deposed, That he the Deponent was then standing on the South-side of the Scaffold, helping to pull it down, when he heard and saw what is above deposed upon; and that the Panel was upon the North-side of the Scaffold, about ten Yards from it, over-against the Middle of the Scaffold; And deposed, That the Panel's Shot at that Time was the last he heard that day. Deposed, That he was present at the Time from *Wilson's* coming down to his Execution, till about he was cut down and carried away; during which Time he heard no Shot fired, until That fired by the Panel. *Capt. Scobie's point.* And this is the Truth as he should answer to God. *Sic jurabitur.**

*James Marshall.  
Jno. Aiken.*

*William Douglas, one of the Soldiers in the City Guard, *Edinburgh*, aged Forty-seven Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, as the Executioner was going up the Ladder to cut down *Wilson*, there were several Stones thrown at him, which obliged him to come down the Ladder; at the same Time there were several Stones thrown amongst the Guard, before *Wilson* was cut down, at which time he heard the Panel fire to the Soldiers, be damned to you, *Bougars*, Fire, after which he heard several shots fired by the Men, but knows nothing of the Panel's having fired; and that these were the full Shots he heard that Day, to the best of his Knowledge. Deposed, That the Panel when he uttered the Words aforesaid, was standing at the South-side of the Gallows. Deposed, That the first Shot was fired first before *Wilson* was cut down, and likewise five of them thereafter. *Capt. Scobie's point.* And this is the Truth as he should answer to God; and declares he cannot write. *Sic jurabitur.**

*Jno. Macmillan.*

*Archibald Young, Lifter in the *Shipy of Hyndland*, aged Forty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time and Place labelled, a little after *Wilson* was cut down from the Gallows, he saw the Panel fire his Piece among the Multitude, and immediately heard him say to his Men, I level your Pieces, and fire and be damned! Whereupon there were six or seven Stones thrown by them, and saw the Panel take a Gun from one of the Men, which he the Panel fired. Deposed, That he the Deponent was within six Yards of the Panel when he fired, and spoke the Words aforesaid. Deposed, That at the same Time when the Panel took the Gun from the Soldier, he laid his own upon the Scaffold, and that there were six or seven Persons, but says not, then standing upon the Scaffold. Deposed, That he saw the Panel fire his own Piece, and he taking the Gun from the *Soldier*, and said, if he did not be about eight or nine Minutes. And deposed, That at the Time he fired the full Gun, there were several other Shots fired at the same Time. Deposed, That there was no shot fired before the full fired by the Panel, and that the second shot fired by the Panel was used the same Place where he fired the full, and that he did not stand above six or seven Yards behind the first firing and the second, and that some of the Soldiers followed the Panel at that Space, and it ended with him.*



to the Place where he fired his Gun. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*Archibald Yellie.  
Ja. Macdonald.*

*William Murray*, Barrowman and Indweller in Edinburgh, aged Twenty-seven Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That he was present, Time and Place labelled, the Dependent being present at the Execution of Andrew Wilson, as he observed two of the Soldiers under the Panel's Command, fire the Gun, but the Gun was fired up in the Air; thereafter he observed the Panel fire his Gun amongst the Multitude, whereupon he observed a Boy drop down, and did hear the Panel call out to the Soldiers, Dams that boy Bourgeois, why did they not fire, even forward, and clear the street? At which time the Dependent was standing about the South Pillar of the Cross-arch, about twenty Yards Distance from the Panel, as he apprehends: Further deposed, That after the said first firing, he observed the Panel take a Gun out of a Soldier's Hand, and fire again, directing it towards a Man he was pursuing, which he did drive off forty Yards; and upon firing, he observed the Person so pursued, falling down; And being interrogated how long his present Dilemma remained with him; Deposed, he has been as dull of Hearing three Years past. Deposed, That the two Shots from the two Soldiers were the first firing he heard upon that Occasion. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*William Murray.  
Do. Elyhu.*

*James Muir*, Watch-maker in Glasgow, aged Thirty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That he was present, Time and Place labelled, at the Execution of Andrew Wilson; and then he did observe the Panel fire his Gun, holding in great fright before him, amongst the Multitude then assembled; and as he heard the Report of the Gun, he observed the Smoak of the Powder coming from the Gun, and this shot was the first he heard upon that Occasion, and as he saw the Smoak, he then fired, was standing between the Gibbet and one Mr. Campbell's Stone on the North-side of the Street near the North-east-end of the Scaffold. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*James Muir.  
Do. Elyhu.*

*William Young*, Merchant in Edinburgh, aged Twenty-four Years, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That he was present, Time and Place labelled, at the Execution of Andrew Wilson, the Dependent then standing within three or four Yards of the Panel, did hear him give Orders to the Soldiers that were behind him to fire, and immediately thereafter he did hear the Panel fire the Gun that was in his own Hand, and upon his firing, observed the Smoak of the Powder coming from it; thereafter he observed the Panel take a Gun from one of the Soldiers, but what Use he made thereof, he knows not; and it was very near Time 'twixt the Panel's firing, and his taking the Gun from the Soldier, as also, a very short Distance between the Place where he fired, and where he took the said Gun; the Place of his firing to the Dependent's Memory, being near to Ralston's Close-side, and where he took the Gun, was a very little way up the Street from it: And the Shot he heard from the Panel's Gun, was the first he heard that Day. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*William Young.  
Do. Elyhu.*

*John Moffat*, Barber, and Servant in the Common Bake-house in Haylie Close in Edinburgh, aged Twenty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That at the Time and Place labelled, the Dependent was standing in Mr. Orr's Door, on the South-side of the Grass-Plow, and some short time after Wilson was cut down, he saw the Panel take a Gun out of one of the Soldiers' Hands, before Mr. Todd's Shop-Door, which he immediately fired off towards the North-wall, a little before which, the Dependent saw him fire his own Gun from the same Place; that upon the Captain's Firing, the Dependent saw some of the Soldiers, who stood behind the Cross-arch, fire their Guns up in the Air. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*John Moffat.  
Gib. Elat.*

*John Stewart*, Merchant in Edinburgh, aged Thirty Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That at the Time and Place labelled, the Dependent was standing as a Window of Mr. Gordon's House, on the South-Side of the Scaffold: That some short Time before Wilson was cut down, upon some Stones being thrown at the Hangman, he observed the Panel jump down from the South-side of the Scaffold, and walk up a little towards the Place where the Disturbance was, but nothing in his Hand but a Coat; immediately after the Wilson was cut down, upon which he heard that the Panel was cut down, began to march up the Bow; and that at the North-Well Corner of the Close, he observed the Panel take a Gun out of a Soldier's Hand, with which he pushed back the Multitude, and that when the Panel came the Length of an Arme, being upon the Rear of the Man, he saw him receive a Stroke with a Stone, upon which he suddenly turned about, and waved his Place on backward, towards the Multitude, but without firing; but a very little after this, he turned about all at once, and he threw some Steps forward, and fired off his Place towards the Crowd With-out: That this was the first Shot which the Dependent either heard or saw made that Day. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*John Stewart.  
Gib. Elat.*

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*John Gidd*, Cow-herd in Glasgow, aged Forty-two Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That Time and Place labelled, he was standing at Mr. Rennie's Shop-head, in the Grass-Market; that a year little after the Hangman had been on the Ladder, to be thought, to cut down Wilson, he observed the Panel with his Gun in his Hand, advance towards the Crowd, where the Disturbance was, and prevent his Place three Times; the Lift of which Times, the Dependent thought he fired his off, for he saw the Prime burn in the Pan, but could not see the fiery Smoak at the Muzzle, because of the Crowd; neither could he with Certainty distinguish the Report, because several other Places were fired off at the same Time: That upon these Points being in hand, he saw one Mr. Todd drop down at the High-Well: That before the Firing above-mentioned, he saw one Mr. Todd's Stone that Day. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*John Gidd.  
Gib. Elat.*

Follows the Witness added for the Panel.

*George Swaine*, Writer in Edinburgh, aged Thirty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That Time and Place labelled, he was present at the Execution of Wilson: That when the Executioner was doing his Duty, he saw Captain Parnon come off the Scaffold, because the Mob was crowding upon the Guard; and while the Panel was endeavouring to get off the Mob, he saw a Man with a Side-Sword about his Neck, press upon the Panel, and seem to endeavour to grip it; but that a young Gentleman there, in green Cloath, kept him off; and then the Panel returned to the Scaffold, but about the Time the Criminal was cutting down, or to be cut down, the Panel went off the Scaffold again; and about that Time there was Stones thrown by the Mob at the Hangman, and the Guard, and some of them fell amongst the Guard: That so far as the Dependent could observe, being upon a Barnacle, upon the South-side of the Scaffold, he saw many of the Stones thrown to be pretty large, but the Dependent cannot call the Disturbance; and then he saw observed a Shot, which was the first that he observed, and came from one of the Soldiers, and this Shot was after the Criminal was cut down; and after this Shot, in a very little followed three or four other shots; and at this Time the Panel had his Place prepared on towards the Multitude; and that he saw the Flight of the Pan of the Soldier's Gun that fired the last Shot. Deposed, That the Panel was going near the Soldier that fired the first Gun. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*Geo. Swaine.  
Ja. Pringle.*

*Thomas Harris*, Doctor in the Regiment of His Majesty's Fusiliers, in the Cameronians, aged Thirty-nine Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That Time and Place labelled, he was present at the Execution of Wilson, when he saw several Stones thrown by the Mob at the Guard, of such Bigness, that was sufficient to have killed them, in case they had hit them as a proper Place; which continued some little Time. Deposed, That while the Criminal was hanging upon the Gallows, the Dependent saw a Man press towards the Panel, and being come near him, he held up his Head to him, in a threatening Manner; but the Dependent did not hear what Words he uttered. Deposed, That when the Panel was upon the Scaffold, he had a Gun in his Hand, but when he came off again, he took a Gun from a Soldier. Deposed, That when the Panel came off the Scaffold, he went about to the Well-side, and turned about towards the North, endeavouring to get his Men together, which he could not well do, they being so much intermixed with the Mob; and they continuing to throw the Stones, the Panel turned about with his Face towards the Well; and having his Face in such a Manner in his Hand, as if he had not designed to fire, but waving it from Side to Side, rather seeming to intimidate them; And at this Time there was a Soldier came upon his Right Hand, and fired close by the Panel, and this was the first Shot the Dependent observed: And deposed, That he had his Eyes directly upon the Panel all this Time. Deposed, He did not see the Panel fire; and he is very well assured, that he did not fire at that Time. Deposed, That after this, the Panel endeavoured to carry off his Men. Deposed, That a Soldier that came up by the Panel's Right-side, came up from behind him. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*Thos. Harris.  
Ja. Pringle.*

*David Rennie*, Merchant in Edinburgh, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That at the Time and Place labelled, the Dependent from his own Window in the Land above Rennie's Door, at the Foot of the Bow, saw the Panel descend off his Men, and marching up the Bow, he saw at the Grass-Plow, at which time the Dependent heard some Soldiers fire, which the Dependent apprehended was in the Rear; the Dependent looking upwards, and they that fired, and being under his Eye. *George Swaine* said. And this is the Truth as he shall answer to God. *See Job.*

*David Rennie.  
Acie. Fletcher.*

*John Clerk*, Sergeant in the Regiment of His Majesty's Fusiliers, aged Thirty-three Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deposed, That the Time labelled, the Dependent was present by the Captain who commanded the Detachment of the King's Troop in the Land above the Place of Execution, and at Orders from the Majorant at the Panel; and having gone up to the Scaffold, and while the Dependent was conversing with the Panel, he saw a Stone thrown at the Executioner, which











not appear thereunto; that he drew off the Men as fast as he could; and that being pursued and pelted by the Populace, divers in the Rear turned about and fled, when your Petitioner was at such Distance, that he could not possibly be privy or consenting thereto.

It was likewise observed at the Trial, and not contradicted, That upon many former Occasions of Unlawfulness, when your Petitioner with the Guard hath been ordered to quell the same, your Petitioner had been great Injurers from the Populace, even to the Danger of his Life, without firing, or ordering his Men to fire, and that in Cases where he would have been well justified by the Law in doing either.

So that upon the whole, as your Petitioner hath the inward Satisfaction of being conscious to himself of his Innocence of the Facts charged against him, he humbly apprehends, that the Evidence adduced to prove the same, when compared with your Petitioner's Defence, will not appear to be certain or conclusive.

But in case your Petitioner had been guilty either of firing, or ordering his Men to fire, upon the Occasion aforesaid, your Petitioner most humbly intreats your Majesty to consider, that your Petitioner was in the Exercise of a Trust delegated to him by the lawful Civil Authority; that he and his Detachment were first unlawfully assaulted and invaded by the Populace, and divers of his Men besides and hurt; and if, in the Case of such an Insult upon the Law, your Petitioner had proceeded to repel Force by Force, your Petitioner humbly begs leave to observe, That yet he should look back with the utmost Sorrow upon so fatal an Event, yet he humbly hopes, that the Prosecution and Aggression aforesaid, would be considered by your most excellent Majesty, in your profound Wisdom, as a great Exoneration of an Offence, which could not be supposed to be attended with any premeditated Malice of your Petitioner, against Persons of whom he had no Knowledge; and that your Petitioner would be deemed a proper Object of the Royal Clemency.

Your Petitioner therefore most humbly begs your most excellent Majesty, to take your Petitioner's unfortunate Case into your Royal Consideration, and to extend that Mercy and Compassion to your Petitioner, by which your Majesty, adorned with all the most and Privately Spectator, is so remarkably distinguished; and that your Majesty will be graciously pleased to give your Royal Warrant for your Petitioner's Pardon. And your Petitioner, whose Duty hath hitherto rendered him, on all Occasions, most assiduously attached to his Majesty, and your happy Constitution, will, from the additional Bond of the most powerful Gratitude, devote his Life to the Service of his most Excellent Majesty, and his Christian House, which he shall enjoy at the Breast of Your Majesty's Clemency and Grace.

Her Majesty was pleased so far to comply with this Petition, as to grant a Reprieve, which was signified as follows:

*Caria Justitiarie S. D. N. Regis testis in Novo Regiam Doms Burgi de Edinburgo, Tertio Die Mensis Septembris Millesimo septingentesimo trigésimo sexto, per Honorabilem Patrem, Andream Fletcher de Milon, Justitiarium Clericum, Dominum Jacobum Mackenzie de Roytoun, Guatem Pringle de Newall, Commisarios Justitiarie, diffusi S. D. N. Regis.*

*Curia Justitiarie affixata.*

THE said Day the Lord Justice Clerk delivered a Letter from his Grace the Duke of Newcastle, one of His Majesty's Principal Secretaries of State, wherein the Tenor follows:

*Whitehall, August 26, 1736.*

My Lords, Application having been made to Her Majesty in the behalf of John Porteous, late Captain Lieutenant of the City Guard of Edinburgh, a Prisoner under Sentence of Death in the Gaol of that City; I am commanded to signify to your Lordships Her Majesty's Pleasure, That the Execution of the Sentence pronounced against the said John Porteous, be respite for six Weeks from the Time appointed for his Execution. I am, my Lords, Your Lordships most Obedient Humble Servant. *Sic subscribitur.* *Habes Newcastle.*

Directed on the Back thus:

To the Right Hon. the Lord Justice General, Justice Clerk, and other Lords of the Justiciary at Edinburgh.

Thereafter, the said Lords gave their Warrant to the Magistrates of Edinburgh, for stopping the said Execution, wherein the Tenor follows: By the Right Honourable the Lord Justice Clerk, the Lords Commis-

saries of Justiciary: Whereas the said John Porteous, Captain of the City Guard of Edinburgh, has been guilty of a Plea by a Jury, and is now under the Sentence of Death in the Gaol of that City; and whereas the said John Porteous, late Captain Lieutenant of the City Guard of Edinburgh, is now a Prisoner in the Tolbooth of Edinburgh, and is now to have been executed upon him, upon the eighth Day of September instant, he is respite for six Weeks from the Time appointed for his Execution. This Respite is to be in Obedience to Her Majesty's Commands, discharge and discharge, to wit, the Magistrates of Edinburgh, and all other Officers of the Town, who put the said John Porteous, late Captain Lieutenant of the City Guard of Edinburgh, upon the said eighth Day of September instant, to have been executed upon him, and the Townsmen of Edinburgh next to come, on which Day, the said Magistrates of Edinburgh are hereby required and enjoined to put the said John Porteous, late Captain Lieutenant of the City Guard of Edinburgh, upon the said eighth Day of September, to have been executed upon him, at the said Tolbooth, the third Day of September, 1736 Years. *Sic subscribitur.*

*Ad Fidelem  
In Mente  
M. P. P. P.*

EXTRACTED forth of the Books of Memorial, upon this and the preceding One hundred and twenty-four Pages. By me John Davidson, Clerk to the Court of Justiciary.

*John Davidson, Clerk.*

But the Populace being greatly displeased with this Favour shown to Captain Porteous, against whom they were mightily incensed, suddenly took upon them to execute the Sentence themselves. Accordingly on *Thursday, September the 7th*, about Ten o'Clock at Night, (being the Night preceding the Day, which had been appointed by the Court for his Execution,) some Men by Surprize carried the City Guard, the five armed, Battle-axes, and the Drums belonging to the City Guards. The Mob in a few Minutes took and forced all the City Gates, and with Drums beat an Alarm, then attempted to force open with Hammers and other Instruments the Prison Door, but their failing, they fire to it, and burst it. When they entered the Prison, they called upon the Under-keeper who was within, and made him open the double Locks of the Apartment where Captain Porteous was; it had also a Bolt within, but was not bolted, in they had ready Access. He begged they would spare him till next Morning; but they refused his Request, and immediately burned him away, which was about Eleven o'Clock. When brought out of Prison, he was heard to cry. They then marched out with lighted Torches before them: In their Way to the *Grave-yard*, passing by a Barber's Sign-post, first called out to hang him up there; but it was refused to hang him where the Murder was committed; so they proceeded to the Place that the Gallows used to be fixed for Execution, where he was about a Quarter of an Hour, till they opened a Shop and brought out a Rope, one End of which they threw over a Sign-post, about 20 Feet high, belonging to a Dyer in the *High-street*, near the ordinary Place of Execution. He desired some Time to prepare for Death; but they answered, I would allow him no more than that which was his. They then pulled him up in the Ditch, in which they found him, viz. a Night-Gown and Cap. His having his Hands loosed, fixed them 'twixt his Neck and the Rope, whereupon one with a Battle-axe struck towards his Head. They then let him down, and having on two Shirts, they wrapp'd one of them about his Face, and tied his Arms with his Night-Gown, then pulled him up again, where he hung next Morning till Day-light. When he was cut down, and carried to the *Grey-Friers Church*, upon inspecting his Body, it appeared his Left Shoulder was wounded, his Back discoloured, and his Neck broke.

It was observed, that this Mob was under a kinder Countenance and better considered than usual, for in marching along to the Execution, Porteous observing a Gentleman of his Acquaintance, gave him a Pulse of 13 Gunnes, which he desired might be deliver'd to his Brother. They left the Prison Doors open, and Liberty to the Prisoners to make their Escape; and after the Execution was over, they left the Arms and Drums on the Place of Execution, where they were found the next Morning. During the Tumult, Parties of armed Men, with Drums, patrolled in the different Streets, to prevent any Surprize from the King's Forces, quarter'd in the Suburbs. After the Execution was over, they went to the Lord Provost's House, and told him they were finished, and so desired, without offering any other Violence.

There is one further Circumstance, That in order to supply the Want of Chappin, they order'd two of the gravest of their Number to exert him, as he went to the Place of Execution.



**CXCIV. The Trials of Samuel Goodere, Esq. Matthew Mahony, and Charles White, for the Murder of Sir John Dinley Goodere, Bt. (Brother to the said Samuel Goodere) on Board his Majesty's Ship the Ruby: At the Sessions of Peace, Oyer and Terminer, and General Gaol-Delivery, held in and for the City of BRISTOL, and County of the same City, in the Guild-hall of the said City; before the Right Worshipful Henry Combe, Esq. Mayor of the said City, Michael Foster, Esq. Serjeant at Law, Recorder; and others his Majesty's Justices of Gaol-Delivery. Begun on Tuesday the 17th of March 1740. and continued by Adjournment to Thursday, the 26th of the same Month, 1741. Published with the Approbation of Mr. RECORDER.**

ON Wednesday, the 18th of March, 1740, a Bill of Indictment was found by the Grand Inquest for the City of Bristol, and County of the same City, against Matthew Mahony and Samuel Goodere, for the Murder of Sir John Dinley Goodere, when Dr. Middleton (Mr. Goodere's Physician) acquainted the Court, That, in his Opinion, Mr. Goodere was, through bodily Indisposition, unable to undergo the Fatigue of his Trial; and that he, Dr. Middleton, was of Opinion for the King, whether the Prisoner's Health would not permit him to be brought into Court and plead to his Indictment; and the Doctor declaring his Opinion, that he might be brought up, Mr. Recorder was pleased to order, that he should be brought up the next Day, in order to plead to his Indictment. Accordingly, on Thursday the 19th, Mr. Goodere and Matthew Mahony were brought to the Bar, when the Court proceeded thus:

*Chief of the Bench.* Matthew Mahony, hold up thy Hand, Samuel Goodere, hold up thy Hand (which they severally did). You stand indicted by the Names of Matthew Mahony, late of the Parish of St. Stephen in the City of Bristol, and County of the same City, Labourer; and Samuel Goodere, late of the same Parish, City and County, Esq. for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Intigu, Power of the Devil, on the 18th Day of February, in the 24th Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth; with Force and Arms, at the Parish Church, in the City aforesaid, and County of the same City, in and upon one Sir John Dinley Goodere, in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your Malice aforethought, did make an Assault; and that you, the aforesaid Matthew Mahony, a certain Cord, of the Value of one Penny, about the Neck of the said Sir John Dinley Goodere then and there feloniously, voluntarily, and of thy Malice aforethought, did put and deliver; and that you the aforesaid Matthew Mahony, with the Cord aforesaid, (by you the aforesaid Matthew Mahony, so about the Neck of the aforesaid Sir John Dinley Goodere put and delivered) then and there him the aforesaid Sir John Dinley Goodere feloniously, voluntarily, and of your Malice aforethought, did choke and strangle; of which said Choking and strangling of him the aforesaid Sir John Dinley Goodere, by you the aforesaid Matthew Mahony in manner and form aforesaid done and perpetrated, he the aforesaid Sir John Dinley Goodere then and there instantly died. And that you, the aforesaid Samuel Goodere, then and there feloniously, voluntarily, and of thy Malice aforethought, was present, aided, abetted, comforted, and maintaining the aforesaid Matthew Mahony as murderer and felon aforesaid, feloniously, voluntarily, and of his Malice aforethought the aforesaid Sir John Dinley Goodere to kill and murder; and so you the said Matthew Mahony, and Samuel Goodere, in manner and form aforesaid, the aforesaid Sir John Dinley Goodere then and there feloniously, voluntarily, and of your Malice aforethought did kill and murder, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

*Chief of the Bench.* How sayest thou, Matthew Mahony, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

*Mahony.* Not guilty.

*Cl. of Arr.* Callen, how wilt thou be tried?

*Mahony.* By God and my Country.

*Cl. of Arr.* God send thee a good Deliverance.

*Cl. of Arr.* How sayest thou, Samuel Goodere, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

*Samuel Goodere.* Not guilty.

*Cl. of Arr.* Callen, how wilt thou be tried?

*Samuel Goodere.* By God and my Country.

*Cl. of Arr.* God send thee a good Deliverance.

*Mr. F. for the King.* Mr. Recorder, I stand as Counsel for the King on this melancholy Occasion, and it is with no small Regret and Concern at any time and on this Station against my Fellow-Citizens, when under Circumstances like those of the Prisoners at the Bar; and the rather, as knowing it almost impossible for us all, as a Bench of this nature, as not to be thought on the one side to have done too much, and on the other too little. However, Sir, I shall, in the Course of this Prosecution, endeavour to observe that Mischance which is ever inferable from humane Nature, and if I can be so fortunate as to convince myself to the Satisfaction of you, Mr. Recorder, and the Court, I shall readily give up the reil, and content myself with the Thoughts of having acted as a faithful Discharge of my Duty.

Sir, the Prisoners, Mr. Goodere and Mahony have thought proper to plead in chief to their Indictment, and put themselves upon their Trial in the ordinary Course of Law; and as far as may be judged from outward Appearance, Mr. Goodere seems able enough at present to take his Trial on the Merits or Demerits of his Case: And if so, we for the King are ready, on our Parts, to enter upon our Duty. On the other hand, if, in the Opinion of that learned Gentleman [Dr. Middleton],

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Mr. Goodere is not in a fit Condition (through bodily Weakness or Indisposition) to be brought upon his Trial, God forbid we should be for pressing it on with such Celerity, as to prejudice him in making of his Defence. But then, as we would not be for accelerating his Trial, it must then would we be for giving him any affected Delay. I therefore hope, Sir, such a Day will be fixed for the coming-on of this Business, as that this suffering part of our Wreckers, whom at present public Justice calls for abroad as well as at home, may be disposed at due time for the other necessary Service of their King and Country.

*Mr. Recorder.* I think we ought to proceed to the Trial immediately, unless Cause be shown to the contrary.

*Mr. Middleton, Counsel for Mr. Goodere.* I appeal, Sir, to the Doctor, whether Mr. Goodere's Case and Circumstances will admit of such a Delay.

*Mr. Recorder.* Let Dr. Middleton be sworn.

[Dr. Middleton sworn.]

*Mr. F. for the King.* Dr. Middleton, I think, Sir, you have attended Mr. Goodere (the Prisoner at the Bar) during the Course of his Illness; will you please interpose to give the Court an Account of his present State of Health?

*Dr. Middleton.* Mr. Goodere has been my Patient for some time in a malignant Fever, which left him last Sunday Evening, and since that time he has been growing better, and on the morning here, in his Fever his Head was very much disordered (as at present happens to be the Case of many that are seized with this Epidemical Fever, the Head being generally much affected in most of them), I think he will not be able to bear the Fatigue of his Trial at present. If he is put upon his Trial, it will be as hazardous.

*Mr. Recorder.* If the Case be so, that his Head is disordered, whereby he is rendered less capable of making his Defence, I think it would be a Piece of Inhumanity not to put off his Trial. What if we adjourn it to this Day seven-night?

*Mr. F.* I am hardly glad to find Mr. Goodere in the mending hand, and hope he will continue to mend; his Counsel seems to think he may now come upon his Trial, yet, for the honour of Dr. Middleton, I would not press it on at this juncture.

*Mr. Recorder.* What dost Mr. Goodere himself say to it?

*Samuel Goodere.* I hope in eight or nine Days to be better, or dead.

*Mr. Recorder.* I have postponed this Day seven-night.

*Samuel Goodere.* Whosoever you please I submit to.

*Mr. F.* Dr. Middleton, Sir, as you are known to be a Gentleman of great Honour and Abilities, we may safely depend upon your Account; therefore I should be glad to know how far (humanly speaking) Mr. Goodere's bodily Health may admit of his taking his Trial. I know, Sir, you are a Gentleman that has a great Regard and Care for your Patients.

*Dr. Mid.* I should rather choose to exceed in Care than fall short of it.

*Mr. F.* But his pallor in have an over care; Therefore, Sir, I would ask you, whether, upon your Oath, you do not think he will be able, in point of Health, to take his Trial in three or four Days?

*Dr. Mid.* The Captain may put himself on his Trial now, if he pleases; but I don't think he's fit for it, upon my Oath. If it was left some, I should desire the whole Time the Recorder has mentioned.

*Mr. F.* This is, in this Day seven-night; we shall not be able to attend the Court then. We hope the Trial will be postoff till this Day seven-night!

*Mr. Recorder.* Let it be so.

*Cl. of Arr.* Matthew Mahony, you stand charged likewise upon the Common Inquest for the same Felony and Murder; art thou guilty, or not guilty?

*Matthew Mahony.* Not guilty.

*Cl. of Arr.* Samuel Goodere, you likewise stand charged upon the Common Inquest for the same Felony and Murder; art thou guilty, or not guilty?

*Samuel Goodere.* Not guilty.

*Mr. Recorder.* The Prisoners may withdraw.

On Thursday, the 26th of March, 1741, the Court met according to Adjournment; and, being open'd, the Prisoners Matthew Mahony and Samuel Goodere were brought again to the Bar; and the Court proceeded as follows:

*Mr. Stophard, Counsel for the Prisoner Goodere.* Mr. Recorder, the Prisoner Goodere has in a great degree lost his hearing, therefore desires that he may be brought nearer the Wreckers, that he may be able to hear what they say.

*Mr. Recorder.* Let him come nearer. Mahony, are you willing to come forward to the Bar?

*Mahony.* Yes, my Lord, I am hard of hearing.

*Mr. Stophard.* He desires the same Indulgence.

*Mr. Recorder.* If he desires it, let him come forward too.

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Mr.











them appear to be Witnesses who were concerned in taking a way the so-called Gentleman to the Ship, and all these, I suppose, are intended to be called as Witnesses. I own it is a Matter of Indifference, and I dare say, Sir, that you will indulge a Prisoner, in these unfortunate Circumstances, the Benefit of making the best Defence he can.

*Mr. Recorder.* Let the Witnesses withdraw. Officers, clear the Way.

*Mr. Forster.* We hope, Sir, it is not intended that all our Witnesses in general should withdraw without Discharge.

*Mr. Justice Smith* (Solicitor for the Prosecution). We define there may be a Room for our Witnesses, where they shall be together, or I may let half my Witnesses. I am myself a Witness, Mr. Recorder, shall I withdraw?

*Mr. Recorder.* No, you shall not go out.—Who do you call first, Mr. Forster?

*Mr. For.* Cyres, call Thomas Chomkley, Esq. [Mr. Chomkley rises.] I thank you, you have been for some time acquainted with Mr. Goodere, the unhappy Gentleman at the Bar.

*Mr. Chomkley.* A Late Acquaintance.

*Mr. For.* Pray, Sir, will you give an Account to Mr. Recorder and the Jury, whether Mr. Goodere, at any time, and when, defined your Interposition with Mr. Justice Smith to bring about a Reconciliation between him and his Brother Sir John Dinsley Goodere?

*Mr. Chomkley.* Yes, Sir, he did. The Captain applied to me to go to Mr. Smith to interpose for him with Sir John, and I did apply.

*Mr. For.* Pray, Sir, how long was it before this unhappy Affair happened?

*Mr. Chomkley.* About three Weeks, I believe.

*Mr. For.* And did Mr. Smith undertake that good-natur'd Office?

*Mr. Chomkley.* Mr. Smith said, he should be ready to do it, and promised me to do all he could in the Affair.

*Mr. For.* When you applied to Mr. Smith, was you alone, or was Mr. Goodere with you?

*Mr. Chomkley.* I went first alone; afterwards Capt. Goodere went with me to Mr. Smith's House.

*Mr. For.* What was the Occasion of your going to Mr. Smith's?

*Mr. Chomkley.* To request him to use his good Offices to get a Reconciliation between Sir John and the Captain.

*Mr. For.* By which, Sir, to tell us what passed on that Occasion, and whether Mr. Goodere acquainted Mr. Smith with the Nature of the Misunderstanding between him and his Brother?

*Mr. Chomkley.* Yes, Sir, that they had been both at Law a great while, and spent a great deal of Money, and therefore Mr. Goodere was willing to have Mr. Justice Smith to reconcile the Matter between them, to prevent the Ruin of the Family, and many more such Expressions as these.

(Mr. Justice Smith sworn.)

*Mr. For.* Mr. Smith, will you give an Account of what you know of this fatal Business?

*Mr. Justice Smith.* Some few Weeks before this Murder happened, Mr. Chomkley applied to me, and told me, that Mr. Goodere (the Prisoner at the Bar) desired that I would use my utmost Endeavour with Sir John Dinsley Goodere to be Friends and reconciled with Mr. Goodere, and that I would suffer him to bring Mr. Goodere to my House. I told him, I often heard Sir John say, that there had been warm Disputes between them, but would make use of all my Endeavours to reconcile them, and that it was pity they should live in hatred, as they were the only two Brothers. Some time after Mr. Chomkley brought Mr. Goodere to my House, where they had about a Quarter of an Hour, when Mr. Goodere gave me Thanks for the Promise I had made to Mr. Chomkley, and he then desired I would do all I could to promote a Reconciliation.

I told him, I should be glad to be a happy Instrument of that fact, and that the first time I saw Sir John I would speak to him on the Affair, and endeavour to prevail on him to meet Mr. Goodere. The Captain said, if any Man in England could do it, I could. I told him, I hoped to succeed. Mr. Chomkley and Mr. Goodere went away. Some little time after, they were gone, I saw Sir John, and told him, that Mr. Goodere had applied to me to do all I could to reconcile them. Sir John seemed to speak much against it at first, and thought it would be no Purpose, for that he had been a real Friend to the Captain, who had used him very ill; but at last he was pleased to make a Compliment on me, and said, I can't refuse you any thing you ask of me. He then mentioned several Things the Captain had said; and in particular told me, that at the Death of Sir Edward Goodere his Father, Mr. Goodere the Prisoner had placed several Persons in the House where Sir Edward lay dead, in order to do him some Mischief, and be apprehended to take away his Life.

*Mr. Recorder.* I must submit it to the Court, that what Sir John said at that Time is not matter of Evidence.

*Mr. Recorder.* It is not Evidence, but perhaps it is introductory to something Mr. Smith has further to say, if it be not, it should not have been mentioned.

*Mr. Justice Smith.* And that he had endeavoured to set aside a common Recovery, and made from Applications to the Court of Common Pleas for that Purpose.

*Mr. Recorder.* Whether this be Evidence, I submit upon it in point of Law that it is not, and it may have an Effect on the Jury.

*Mr. Recorder.* I will take Notice to the Jury what is not Evidence. Go on, Mr. Smith.

*Mr. Justice Smith.* After Sir John had repeated several Stories of this sort, he concluded at last (as I told you before) and why, Mr. Smith, if you ask it of me, I can't refuse. I saw Mr. Goodere soon after, and told him, I had seen Sir John, and talked with him, and he was pleased to tell me, that he would for him, and bid me contrive a convenient Place to bring them together. I told Mr. Goodere about the Attempt to set aside the Recovery. I wonder, said Mr. Goodere, he should mention any Thing of that, for I can let it slide when I please. I told him, I thought he could not; for, said I, I have had a good Opinion on it, and am so led a large Sum of Money upon the *Warrapledge* Estate. He said, I

wonder that any body will lend him Money upon that Estate; I am near in Remembrance, and they will run a Risk of losing the Money. I do assure you, I and he can't borrow a Shilling on it without my Consent, but if my Brother is reconciled, then, if we would Money, we might do it together, for he cannot secure it alone. If he did me, that he should take it as a great Favour, if I could fix a Time as soon as I could to bring them together. Some after I saw Sir John, and he told me he was very deaf, and was obliged to go to Bath, and thus appeared to be with me on Tuesday the 15th of January last in the Morning, when he would talk with me about the Business of advancing the Money on his Estate.

After this I saw Mr. Goodere, and told him that I had seen his Brother, that he was to be with me on Tuesday the 15th of January last, and desired him to be in the Way, for Sir John was always very punctual to his Appointment, and if his Brother was any Thing happened to prevent him, he always sent me a Letter. Mr. Goodere thanked me, and told me he would be in the way, and on the Tuesday Morning saw John come to me on Horseback, just alighted, and came into my Office. I asked him to sit down, having been sent to go to Bath, and he said, that he had not been there, but he should be better. I told Sir John, that his Brother knew he was to be in Town, therefore hoped he would find down a letter, that I had presented him to bring them together. He said, I can't now; but you shall see me again soon, and then I must go. I asked him, When shall I see you again, to finish the Business you and I are upon; the Writings are made, name your own Time, the Money will be paid? He appeared to be with me on Monday Morning to settle that Business, and said, I shall come to town the Saturday or Sunday before, and when I come I will let you know at: He then mounted his Horse and rode off.

Shortly after (as I was going to the Temple) Mr. Justice Smith, I saw Mr. Goodere, he told him I had been to Bath, and that his Brother had been in Town. He said, he had seen him, and thought he looked better than he used to do. I told Mr. Goodere, that his Brother had appointed to be with the Saturday Morning next on Business, and I expected him to be in Town either the Saturday or Sunday before. I then had many Compliments from Mr. Goodere, and he said, how good it would be to make up the matter between him and his Brother. I heard nothing of Sir John being in Town till Sunday the 18th of January last in the Morning, when he sent me a Letter to let me know that he came to Town the Night before, and would be glad to call upon me at any time I would appoint. I sent him for Answer, that I was to dine from thence, but would soon return, and be at Home at Three o'clock that Afternoon. And as I was passing by, I kept the Coach at Capt. Goodere's Lodgings in Prince-Street. I asked if he was at Home? You'd him alone, and then showed him Sir John's Letter. He read it, and asked the Time I appeared. I told him Three o'clock that Afternoon. Said he, I think my Brother writes better than he used to do. I said, Mr. Goodere, I think it would be best for you to be accidentally on Purpose at that Time at my House. No, says he, I don't think that will be to sell, I think it would be better for you to find for me. I returned to my House, and my Servant told me that Sir John had called, and that he had been here again presently. Whilst my Servant was telling me this, Sir John came in, I took him by the Hand, and asked him how he did? I thank God, says he, I am something better, and after I have settled this Affair with you, I will go to Bath for some Time, and then, I hope, I shall be better. I told, Capt. Goodere is waiting, I beg you will give me leave to find for him, you know you find you would sit him. With all my Heart, says Sir John, I know I gave you leave. I then sent down a Servant to Captain Goodere's Lodgings, to let him know that Sir John was with me, and desired him to come up. The Servant returned, and said, Here is Captain Goodere, on which I said, Sir John, please to give me leave to introduce your Brother. He gave leave: Captain Goodere then came in, and afterwards I introduced him to Sir John. I desired them to sit down. Sir John took on one side of the Fire, and Captain Goodere on the other, and I sat between them. I called for a Table and a Bottle of Wine, and filling a tall Glass, I said, Sir John, give me leave to drink Love and Friendship. Ay, with all my Heart, says Sir John, I don't drink Wine, nothing but Water, notwithstanding, I with Love and Friendship. Captain Goodere tilted a Bumper, and pledged it, spoke to his Brother, and drank Love and Friendship, with his Brother's Health. We sat some time, all seemed well, and I thought I could have reconciled them. The Cook lying out of the Parlor, Captain Goodere takes up the Cook in his Hand, put it into the Mouth of the Bottle, and drank in very hard. I then said, Thank Sir John will not drink Wine, you and I will. No, says Captain Goodere, I will drink Water too, if I drink any more: and there was no more drank. After they had talked several things (particularly Captain Goodere of the Pleasantry of the Situation of the Estate in *Warrapledge*, and Goodness of the Land) in a very pleasant and friendly way, Sir John rose up, and said, Mr. Smith, what time would you have me to be with you To-morrow morning? I appointed him a Clock. He said, Brother, with you well, I thank you for me, I wish he with you has an Hour before Sir John went down the stairs, the Captain went following. I kept him, and said, Pray don't go, Captain, let you and I drink a Glass of Wine. No more now, I thank you, Sir, he said, I think, said I, I have done great Things for you. He pushed a little, and said, By God, I will not do it, and in a very short time the Captain went to, and then the Squire. I followed him to the Door, and observed him to go after Sir John down the Hill, and before he turned the Church-yard Wall, to be out of my Sight, I observed some Satires come out of the White-Hart Ale-house within view of my Door, and they ran up to Captain Goodere. I heard him say, *He is a body*? (I thought he meant the Boat) They said, Sir, He bid them make haste. I then bid (as I say) fall towards the Lower Green, and then having a Bottle in his Hand, Captain Goodere went very fast down the Hill, and had it not been by mere accident I should have followed him, (but some People think 'twas well I did not) for I promised my Wife to return to the House where we dined at *Lyons's* Square, where I went from after.

*Mr. Recorder.* Mr. Smith, did they all go toward the Lower Green?

*Mr. Justice Smith.* Yes, Sir, they all went toward the Lower Green.

*Mr. Recorder.* And did they all go toward the Lower Green?

*Mr. Justice Smith.* Yes, Sir, they all went toward the Lower Green.

*Mr. Recorder.* And did they all go toward the Lower Green?

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*Mr. Recorder.* And did they all go toward the Lower Green?

*Mr. Justice Smith.* Yes, Sir, they all went toward the Lower Green.



Mr. *Tarrant Smith*. No, Sir, but some towards the Butte on St. Andrew's Back. Sir *John* went that way, and Captain *Gardner* followed him; but the Men who came out of the Alley first went towards the Lower Green Gate. About a Clock in the Evening, at I was riding up the Hill towards the College-green, I observed a Soldier had been at one into the Coach, as if he had something to say, and I turned to be in a Confusion. I walked into the Coach, the Soldier with me, and then he said, I am informed, Sir, your Name is Mr. *Tarrant Smith*. Yes, says I, it is. (What I am now going to say, Mr. Recorder, is what the Soldier told me.) He told me, that as he was drinking with a Friend at the King's Head Ale-house at the Lower Gate, he heard a Noise, and he put me for what was the matter, when he saw a Prison defiled (as he described) like Sir *John's* Dress.

Mr. *Fenn*. Pray, Sir, how was Sir *John* defiled?  
Mr. *Tarrant Smith*. Sir *John* was dressed in Black Cloths, he had a ruffled Shirt on, a scarlet Cloak, a Black Velvet Cap (for the sake of keeping his Eyes warm) and a head-broom'd Hat flapping. He described this exactly, and told me likewise, that the Captain of the Man of War and his Crew had put the Prison into Custody, and by force had put him on board the Man of War's Barge or Boat lying near a Ship, by the King's Head, that the Gentlemen cry'd out, For God's sake, if you have any Power or Compulsion upon an unfortunate Man, go to Mr. *Tarrant Smith*, and tell him how I am ailed; and that the Captain hearing him cry out, kept his Mouth with his Hand.

Mr. *Recorder*. What did the Soldier define of you?  
Mr. *Tarrant Smith*. The Soldier defined me to appear into it, for that he did not know the Intention of taking off a Gentleman in that way.

Mr. *Recorder*. Did you say any thing out that request of the Soldier?

Mr. *Tarrant Smith*. Yes, Sir; it immediately occurred to me, that Sir *John*, when he left my House, told me that he was going to his Lodgings. I went to his Lodgings, (which was at one Mr. *Roe's* near the Alley) I there asked for him, and related the Story I had heard; they told me they had not seen him since he went to his House.

Mr. *Fenn*. Mr. *Smith*, Sir, will you inform us by what Name the unfortunate Gentleman (you are speaking of) was commonly called.  
Mr. *Tarrant Smith*. Sir *John Dineley Gardner*, his Mother was a *Dineley*, and there came a great Estate from her side, in that, which occasion'd his being called by the Name of *Dineley*.

Mr. *Fenn*. When Sir *John* went from your House on Tuesday, was he alone, or had he any Attend with him?

Mr. *Smith*. Sir *John* was well guarded; he had Fifteen, and I think his Servant had Fifteen also.

Mr. *Fenn*. I think you told us but now, that Sir *John* was to be with you on the Sunday; pray, when did you let Mr. *Gardner* know it, Sir?

Mr. *Smith*. I met Captain *Gardner* about five days at Black-gate, and told him of it; and he said, he had met his Brother himself.

Mr. *Fenn*. Pray, Sir, did Mr. *Gardner* tell you, to whom the Estate would go on Sir *John's* Death?

Mr. *Smith*. Yes, his eldest child he was the next Remainder Man, and that the Estate would come to himself or his Brother's Death.

Mr. *Recorder*. Well, Mr. *Gardner*, you have heard what Mr. *Smith* hath said, have you any Questions to ask him?

Mr. *Shephard*. Mr. Recorder, what I have to ask of you, with Submission, on behalf of Mr. *Gardner*, is, that you will indulge Counsel to put his Questions for him to the Court, and that the Court will then be pleased to put them for him to the Witnesses. It is every Day's Practice at the Courts of Westminster, Old Bailey, and in the Court.

Mr. *Fenn*. Then, I apprehend, is a Matter purely in the Discretion of the Court, and that can neither in civil or any other Court of criminal Justice be demanded as a Right. The Judge, I apprehend, said as they sit on these Occasions, and few of them (as far as I have observed) walk by one and the same Rule in this particular: some have gone so far, as to give leave for Counsel to examine and cross-examine Witnesses; others have had the Counsel propose their Questions to the Court; and others again have directed that the Prisoner should put his own Questions. The Method of Practice in this point, is very variable and uncertain; but there certainly know, that by the settled Rule of Law the Prisoner is allowed no other Counsel but the Court in Matters of Fact, and ought either to ask his own Questions of the Witnesses, or else propose them himself to the Court. I have one more Question to ask of Mr. *Smith* before we put him with him.

Sir, I think you was present when Mr. *Gardner* was brought to Bridewell, after his Brother's being killed; I'd be glad to know whether you then heard him say any thing, and what, concerning this foul Braguet?

Mr. *Smith*. I was present when Mr. *Gardner* was brought to Bridewell after this Murder happened, when he was still (before the Judices) about the seizing, detaining and murdering Sir *John Dineley*; and he then directly answered, that he did not know that his Brother was murdered or dead. He was then asked in relation to the manner of seizing him, and carrying him away; he said he knew nothing of it till he came to the Boat, and when he came there he saw his Brother in the Boat; but he did not know that his Brother had been used at that rate.

Mr. *Shephard*. Mr. *Smith*, Sir, you are speaking about Sir *John*; by what Name did you commonly call him?

Mr. *Smith*. Sir *John Dineley Gardner*.

Mr. *Recorder*. Mr. *Gardner*, have you any Question to ask Mr. *Smith*?

Second *Gardner*. Yes, Sir. Mr. *Smith*, I ask you what Sir *John Dineley's* Business was with you, and how much Money was you to advance to?

Mr. *Smith*. Five Thousand Pounds, Sir; and I told him that I was satisfied that it was a good Title.

Second *Gardner*. I ask you, if you knew him to be a Knight and Baron?

Mr. *Smith*. I can't tell; I never saw the Letters Patent.

Second *Gardner*. Can't you tell how you tried him in the Writings?

Mr. *Fenn*. I am very loath to interrupt Mr. *Gardner*, but must submit it, Sir, that this Question is extremely improper, because personal Knowledge is by no means legal Evidence of his Brother's having been a Baronet; for Baronetage must be derived from Letters Patent: Neither can

I see, Sir, (with great Submission) how it would be at all material in this Case, whether the Deceased was a Baronet, or not. By the Indictment the Prisoner stand charged with the Murder of one Sir *John Dineley Gardner*, and the Witnesses Mr. *Smith* proves that the Party whom we shall hear to have been murdered, commonly went by this Name.

Mr. *Shephard*. With great Submission, Mr. Recorder, I think it is a very material Question in point of Law: Upon the face of the Indictment it appears, that he is defamed by the Name of Sir *John Dineley Gardner*; as a Baronet for the King, the Party ought to be set forth with his Additions and Titles, the Prisoner committing the Fact, as well as the Person on whom it was committed: The Deceased is defamed by the Name of Sir *John Dineley Gardner*, and if he was a Baronet by Patent, it's Christian Name, if the Deceased was a Baronet, then he is improperly defamed, and then the Prisoner can't be found guilty on this Indictment. The Question before you, Sir, is, Whether this Question was proper to be asked the Witness?

Mr. *Recorder*. Can I presume him to have been a Baronet, or can I admit of Parole Evidence to prove him so?

Mr. *Fenn*. Mr. Recorder, I beg leave to be heard in answer to this Observation of Mr. *Shephard's*, which I apprehend to be one of the most extraordinary I ever heard from a Gentleman of the Long Robe, and am bold to say the learned Gentleman who made it (if in earnest), is much mistaken in it, and in the Doctrine he hath advanced concerning it.

With great Delicence to your Judgment, Sir, I speak it, his Object is, if I apprehend it rightly, that the Prisoner mentioned in the Indictment to have been murdered, is, or is called by the Name of Sir *John Dineley Gardner* only, and that by the Evidence it appears the Prisoner murdered was Sir *John Dineley Gardner* Baronet, and he would from thence infer, that there is a Mistake in the Description of the Person murdered, and a Variance between the Indictment and the Evidence. Our Baronet, 'tis well known, are but of modern Institution, and their Creation by Patent from the King, as the Fountain of Honour; and whoever made Lord *Cole's* 12th Report, will find it to have been resolved, at a learned Conference in the Time of James the First, That the King could erect such a Dignity by Patent defensible to the Heirs Male of the Body, as a Peerdom and inheritance for Eternity. But that where a Baronet is murdered, it is necessary to set forth his Name (for more properly Title of Dignity) as in the Indictment, I must take the liberty to deny. The Difference, which I apprehend has been always taken and allowed, is between the Indictor, or Person charged by the Indictment with committing the Offence, and the Person on whom the Offence is laid therein to have been committed. 'Tis indubitably true, that the Indictor's Addition (whether of Title or otherwise) must be set forth in the Indictment; but what is the Reason? Why, because it is expressly required by the Statute of the 6th of Henry the 6th, which directs, that Indictments and Writs where Precedents of Outlawry is allowable, the Estate, Degree or Military of the Defendant shall be specified in his Name, to prevent troubling one Person for another. But Sir, with great Satisfaction, that history was never taken to extend to any other but the Defendant. All the Law requires, as to the Person on whom the Offence is laid to have been committed, is a convenient Certainty in the Description of him; and surely a Description by the right Christian and Surname is such, and sufficient to ascertain the Person accused, especially where it does not appear otherwise any other of the same Name. In the Indictment against *Cole* and *Weston* on the County Act, for defaming Mr. *Cole's* Brother-in-law Mr. *Croyle*, and which was settled with great Advice, the Person defamed is described as here, one *Edward Croyle* only; and all the modern Precedents of Indictments at the Old Bailey are silent, as to the Addition of the Person, when the Offence is laid to be committed; and it is certainly best and safest to omit it. Lord *Cole* in his first Indicture lay it down, that a Person may have divers Surnames, and that a Purchase by either of them is sufficient, yet but one of them is his true Name; which shows the Law is not so over-curious in the manner of describing Persons; and, if I mistake not, it has been held that even the Indictor himself can take no Advantage of a Mistake of his Surname, if his Christian Name be right, and he be otherwise described with convenient Certainty.

Besides, Sir, this is begging the Question; for it does not appear in Proof that the Deceased was a Baronet, he might for aught appear specially to the Court have been baptised by the Name of Sir *John*. Baronetage as a great-Dignity we know is Matter of Record, which is a thing possible only by itself; therefore if they would have taken any Advantage of it, they should have had the Letters Patent of Creation, or an Exemplification of them, at least *Ex Po*, (as the Law terms it) made to produce in Court; and for an Authority in Point, Sir, I beg leave (just to mention the Case of Sir *Richard Greaves* (Titular Lord *Probus*), he was and died as a Commoner, and objected that he was a Lord, and as such triable by his Peers. But Lord Chief Justice *Hill*, and others then present, acquiesced him they could take no judicial Notice of his being a Lord (though they themselves called him so out of Courtesy when they spoke of him); unless he produced the Patent of Creation, or a Copy of the Roll, because Marquis of *Roche*, to his Objection vanquished, and so I hope will this Gentleman's. Had we called the Deceased in the Indictment Sir *John Dineley Gardner* Baronet, then, Sir, we should probably have been told, that we had failed in Proof of the Identity of the Prisoner, for that the Baronetage was in it. Creation removed it, and made a Comment on the Patent's Surrender of *Gardner*, and would only on that Name; and that the Deceased, ~~as before~~ as a Baronet, was not of the true Name of *Dineley*, and so up in the matter so each Person as Sir *John Dineley Gardner* Baronet ever in *Raven* Name.

Mr. *Shephard*. Mr. Recorder, Mr. *Fenn* says it does not appear that Sir *John Dineley* was a Baronet, and that would be to produce the Letters Patent to show him such, I think it is a pretty hard Objection, considering that by Law a Prisoner cannot look into his Indictment, nor have a Copy of it, in order to be advised therein. Here it comes out only on laying the Indictment read, and the Prisoner killed in therein described by the Name of Sir *John Dineley Gardner* only, without adding the Title Baronet; so that it is impossible for us to be prepared with the Letters Patent, or with any Evidence of his being a Baronet, therefore humbly hope we are proper in asking this Question of the Witness Mr. *Smith*, who was so conversant with the



the deceased Gentleman, had the Perusal of his Writings, all his Title-Deeds lay before him, in that he cannot but know the Certainty of his Title and Degree.

*Mr. Reeves.* It is a great Mistake to say, that it is necessary to set forth in the Indictment the Addition of the Person on whom the Offence is supposed to be committed; the Law requires no such thing, and the Prisoners suffer no manner of Inconvenience by leaving out the Addition; because on this Indictment if they should happen to be acquitted, or should be convicted of Homicide under the Degree of Murder, they may plead that Acquittal or Conviction in lieu of a second Protection for the same Fact, with an Amendment that the Party mentioned in both Indictments, though under different Descriptions, was one and the same Person: It is sufficient that the Deceased is denominated by his Christian Name, and the Surname by which he was commonly called. The Question propounded to the Witness is improper; for it is not at all material in the present Case, Whether Sir John was a Baronet, or no. I would not deny the Prisoners any Advantage they are by Law entitled to, but I cannot admit of Evidence which can serve only to amuse—*Mr. Godere.* Have you any more Questions to ask this Witness? *Mobley.* Have you any Questions to ask? [Said short.]

(Said short.)

*Mr. Fenn.* Mr. Hulse, I think you are the Landlord of the White-Hill? *Mr. Hulse.* Yes, Sir.

*Mr. Fenn.* Pray, where about is the House?

*Mr. Hulse.* Over against St. Agatha's Church.

*Mr. Fenn.* Can you let Mr. Jervis Smith's House from the Window of yours?

*Hulse.* Yes, Sir, very plain.

*Mr. Fenn.* I presume you are not unacquainted with the Prisoners Faces?

*Hulse.* I have seen the Prisoners several times.

*Mr. Fenn.* I would not lead you in your Evidence, but would be glad you'd give an Account to Mr. Recorder, and the Jury, whether Mr. Godere (the Gentleman at the Bar) applied to you about coming to your House, if so, pray tell us when it was, and upon what Occasion?

*Hulse.* The 13th of January (which was an Monday) Captain Godere and Mobley came to my House; Captain Godere asked my Wife, Have you good Ale here? She said, yes, he also asked, What Place have you over-head? I answered, a Choke, a Place where Gentlemen usually sit to look out. Will you please to let me see it, says he? Yes, Sir, said I. I went up to show it, he and Mobley went up; the Captain said it was a very fine Prospect of the Town; he asked for a Pint of Ale, I drew it, and he gave it to Mobley, he drank it; and then the Captain asked my Wife, whether he might have a Duff of Coffee to-morrow Morning? Sir, said she, 'tis a thing I don't make use of in any way, but, if you please, I will get it for you. Then he told her, he would be there to-morrow Morning by about Nine o'clock. Mobley was by then.

*Mr. Fenn.* Did you hear this Discourse pass between your Wife and Mr. Godere?

*Hulse.* Yes, I did, and then the Captain paid for his Pint of Ale, and went away; and the next Morning (being Tuesday the 14th of January) he came again to my House before my Wife was up, and I was making the Fire (for I keep no Servant). I did not know him again, I thought he was another Man; says he, Landlord, can you open them Windows in the Parlour? I told him, I would, and so I did; he looked out, and I thought that he had been looking for somebody coming from College; Pray, says he, when your Wife was in the House, did she ever tell you that she talked with her about having some Coffee for Breakfast. I told him, she should come down presently, but I had much rather he would go down to the Coffee-house, where he would have it at order. No, says he, I will have it here. My Wife came down, he asked if he might go up stairs where he was before; he went up, and by and-by Mobley and three Men more came in; I did not know Mobley's Name: When they came in, the Captain was above stairs; he desired me to make his Men sit and drink whatever they would, and he would pay for it; I brought them Bread and Cheese, they eat what they pleased; Mobley went backwards and forwards, up stairs and down several times; he went out, but where, or what for, I did not know.

*Mr. Fenn.* Did Mobley, when he went up stairs, go in to Mr. Godere?

*Hulse.* Yes, several times; Mobley put the Coffee, and some Bread and Butter, and made the Toast, and did every thing for the Captain; I thought he had been his Footman. When the Captain had breakfasted, and had made the Men welcome, he thrust himself (some Porter brought fresh Clothes to him). By-and-by a Man ran along, says he, I believe, was Sir John Godere's Man, with Pistol before him; I heard somebody say that it was his Man; and soon after the Captain had thrust himself, Mobley went out about a Quarter of an Hour, and came back sweating, and went up to the Captain; and he looking out of the Window, says the Man on horseback, and leading another Horse (which I took to be his Master's), and by and-by Sir John mounted, and rid down between my House and the Church; and I had some glimpse of him, and heard the Captain say, Look well at him, but don't touch him.

*Mr. Recorder.* This you heard the Gentleman above stairs say to the four Men before?

*Hulse.* Yes, Sir, he spoke those Words to the four who came in.

*Mr. Fenn.* Did Sir John and his Man appear to have any Arms?

*Hulse.* Yes, Sir, they had both Pistols before them.

*Mr. Fenn.* Those Men that were along with Mobley, do you know what Ship they belonged to?

*Hulse.* There was a young Man, I believe forsooth of an Officer, came to my Wife, and asked him, Is the Captain at the Man of War here? she answered, that she did not know; but there was a Gentleman above, and there were six other Men besides in the other Room in another Company, which I did not know belonged to the Captain, until he ordered six Pints of Ale for them. The Captain ordered Entertainment for ten Men.

*Mr. Fenn.* Where were those six Men?

*Hulse.* In the Kitchen; they did not belong to the Man of War, nor were not in Company with the other four.

*Mr. Fenn.* Now, will you proceed to give an Account what followed upon Mr. Godere's falling? Look well at him, but don't touch him.

*Hulse.* As soon as Sir John went down the Hill, this Mobley kept up to the Captain and came down again, and he said the other three in his Com-

pany went down the Hill, and the Captain followed them; the Clothes which the Captain pulled off were left in the Room; when the Captain was going out at the Door with his Sword and Cane, I thought I was pretty sure of my Reckoning, because of his Cane's being left. The Captain said at the Door, Landlord, I will come back and pay you presently.

*Mr. Fenn.* How long was he before Mr. Godere returns to your House?

*Hulse.* He came again about a Quarter of an Hour: When he came again, he went up stairs, changed a Guinea, he asked what was to pay? I told him four Shillings and six pence; Penny half-pence; and then he went away. About an Hour and a half after Mobley and the other came again, sweating, and said they had been a Mile or two in the Country. Mobley asked Credit for a Tankard of Ale, and said Sir John would come up on Saturday following, and then he would pay for it. Well, said I, if he is so come up on Saturday, I will not stand for a Tankard of Ale, but if he don't come, how shall I have my Reckoning? Says Mobley, I live at the Dutch Arms in Marsh-field. Well, said I, I will not deny drawing you a Tankard of Ale, if you never pay me. Said he, you had best get the Rouse ready against Saturday, and make a Fire, and just do it.

*Mr. Fenn.* Pray, when Mr. Godere went away from your House, was he in the same Dress as when he came first there that Day?

*Hulse.* No, Sir. When he came there he had a half-colored Coat, and he looked like a Country Farmer at his best evening; but when he was out, he had a Scarlet Cloak on, wore a Sword, and had a Cane in his Hand; a Porter brought him the Things.

*Mr. Fenn.* Do you know any thing of what happened on the Sunday following?

*Hulse.* Yes, Sir, the Sunday Morning Mobley came to my House, having Trousers and a short Jacket and Leather-Cap on, asked for a Quart of Ale, this was Mobley. My Wife said, Don't draw any more open tick, Mobley gave a Six-pence and paid for it, and said, See that the Room be clean, the Captain will be up in the Afternoon, and then he'll be here. And as he was going out of the House, he bid me, if you fortune in for that Gentleman go up with the black C before that time, do you find a Porter to me to the Dutch Arms. I told him I had no Porter, and could not find. About 3 o'clock in the Afternoon, when he came again with a Pistol who had a scalled Face, and one or two more, a Man who lodged in the House came and told me, that they wanted to go up Stairs; but I would not let them, because it was in Service-time: They all went into the Parlour, and had a Quart of Ale, and when that was drunk, Mobley called for another; and then eight or nine Men more came and called for Ale, and went into the Parlour, but Bill kept looking out; and on, or then being a little Fellow, I don't know his Name, kept flaring the Door together, ready to break the House down. Says he, Don't let them come about my Ears, don't think you are in Marsh-field, then the lark, Follow came up as if he was going to fluke me, I was coming up about of the Cellar with a Dribble of Ale in my Hand, for a Gentleman going to the College: I saw this Gentleman (pointing to the Professor Samuel Godere) and the Deceased walk down the Hill, I looked after them, and so did Mobley; and then all their Men rushed out, and followed them. Mobley paid the Reckoning, and went away; I ran in to see for my Tankard, for I was much afraid of being that then the Reckoning. And then I all I do know from the Beginning to the End.

*Mr. Fenn.* How long did he continue at your House on the Sunday?

*Hulse.* I believe, Sir, an Hour and an half; and there was some or other of them still looking out, and waiting at the Door.

*Mr. Recorder.* You say that Mobley desired you that if you saw the Gentleman in the black Cap go by, to send a Porter, who did you apprehend that Gentleman to be?

*Hulse.* The Gentleman that rode down the Taylor.

*One of the Jury.* To what Place was you to send the Porter?

*Hulse.* To the Dutch Arms in Marsh-field, where Mobley lodged, if the Gentleman in the black Cap did go up to Mr. Smith's.

*Mr. Fenn.* I think, you say, you saw Mr. Godere on the Sunday go down the Hill, after the Gentleman in the black Cap?

*Hulse.* I did, Sir, but nobody else was with him.

*Samuel Godere.* Did you see him at that Day?

*Hulse.* Yes, Sir, I saw you go into Mr. Jervis Smith's; and when you came down the Hill, after the Gentleman in the black Cap, you called out to Mobley and his Company, and bid them to look sharp.

*Samuel Godere.* Did you see any body with me that Day? I was not at your House that Day.

*Hulse.* I did not say you were; but as you was going to Mr. Jervis Smith's, I heard one of your Men say, There goes our Captain, or else I had not looked out.

*Mobley.* I beg leave, my Lord, to ask him, who it was that the Captain bid Mobley to look sharp at.

*Hulse.* The Gentleman with the black Cap.

*Mr. Recorder.* Was the Gentleman in the black Cap, at whose going by they all rushed out, the same Gentleman whom you had seen before go to Mr. Jervis Smith's?

*Hulse.* Yes, Sir; but Mobley gave Half-a-Crown for my Reckoning, and as they rushed out so hastily, I was afraid they had taken away my Tankard; for which Reason I went to look after it, and saw no more.

(Thomas Williams speaks.)

*Mr. Fenn.* Mr. Williams, I think you belonged to the *Roly* at the time when this melancholy Affair happened?

*Thomas Williams.* Yes, Sir.

*Mr. Fenn.* What Station was you in?

*Thomas Williams.* I was ordered to walk the Quarter-deck.

*Mr. Fenn.* Will you give an Account of what you know in relation to the ill Treatment of Sir John Dursly Godere? Tell all you know about it.

*Thomas Williams.* I came up on Sunday the eighteenth Day of January last for my Commander, went to his Lodgings, he was not at home; I was told there, that he dined that day at Dr. Aird's, and he was just gone thence. I went to Dr. Aird's, after him, and he was just gone from thence; I then returned to his Lodgings and found him there; I told him the Barge was waiting for



**Mr. Recorder.** He said me if I knew the River, and if I knew the Brick-yard, &c. *Law-John* said I told him that I knew the *Law-John*, and at last I recollect that I remember the *Black-John* meant. That is well enough, says he. While I was there, *Malady* came up to him, and the Captain desired me to go down stairs, for he wanted to speak to *Malady* in private. I went down stairs, by-and-by *Malady* came down and went away, then I went up to Captain *Godfrey* again, when he directed me to get all the Hands together, and go down into the Barge, and, says he, let it be landed at the Brick-yard. He asked me, if I knew the *Black-John* as the *College Green*? I told him I did, and he directed me to take eight Men up with me to the *White Horse*, and let two remain in the Boat, for I had a Gentleman coming on board with me. I did as I was ordered, and when I came to the *White Horse*, I saw *Malady* and some of the Prisoners Men with him there in a Room; I did not like their Company; I went into the Kitchen; I asked the Landlord to make me a Pint of Toddy; I hesitated not, whether I would have it hot or cold; I told him a little more; he was going about it, but before it was made, *Malady* and the Prisoner's Men rushed out of the House: I seeing that, followed them; they had the Gentlemen in Possession before I came to them, and were dragging him along. I asked them what they were at. One of the Prisoner's Men told me, if I did not hold my Tongue, he would throw me over the Key into the River, and immediately Captain *Godfrey* came there himself: The Prisoner's Men asked what they should do with him, and he directed them to take him on board the Barge. I followed them down the Basin, till the Gentlemen cried out Murder, Murder! Mr. *Stephen Perry* the Anchor-finish came out of his House, and asked me what was the matter; I told him I did not know: *Malady* said he was a Murderer, he had killed a Man on board the Man of War, and that he had run away, they had carried him before a Magistrate, and he was ordered back to the Man of War to be tried by a Court Martial.

**Mr. Recorder.** Was the Captain with him at the Time *Malady* said that?—*Thomas Williams.* He was just behind.

**Mr. Recorder.** Was he within hearing?

*Thomas Williams.* Yes; and when they had brought him into the Barge, Captain *Godfrey* desired to have the Clerk put over *John* to keep him from the Cold, but *John* said he did not want a Clerk, neither would he have it. The Prisoner's Men wanted me to put them on the other side the Water, but I said I would not without the Captain's Orders. They asked the Captain, and he directed me to do so, and I put them ashore at the Glass-house, and just as I came over against the *White Horse*, there was a Gentleman standing whom *John* knew, to whom *John* cried out, Sir, do you know Mr. *Terrill* said? But before he could speak any more, the Clerk was then sent to him to prevent him crying out, and the Captain told me to fire the Barge on the other side, and we got clear of the Nauf of the People; and when we were got clear, he directed me to fire the Boat in the middle, as I ought to do. I obeyed his Orders.

**Mr. Recorder.** Who threw the Clerk over him?

*Thomas Williams.* The Captain, And the Captain being at near to *John* as I am to your Lordship, Sir, John asked the Captain what he was going to do with him? Says the Captain, I am going to carry you on board, to save you from Ruin, and from lying rotting in a Goal.

**Mr. Ferris.** And what Reply did Sir John make to that?

*Thomas Williams.* He said, I know better than that, I believe you are going to murder me, you may as well throw me over-board, and murder me here right, as carry me on board Ship and murder me. No, says the Captain, I am not going to do any such thing, but I would have you give your Peace with God. As I fired the Boat, I heard all that passed. We brought Sir *John* on board between five and eight o'clock, he could hardly go up into the Ship, he being so beset with Cold; he did go up of his own accord, with the Men's Alliance.

**Mr. Ferris.** How was he treated on board the Man of War?

*Thomas Williams.* Sir, I don't know how they treated him after he went on board the Ship. I was excited from watching that Night, so I went to my Hammock; but after I was out of my first Sleep, I heard some People talking and walking about backwards and forwards. I was surprised; at last I peeped out of my Hammock, and asked the Centinel what was o'clock? He said, Between two and three. And then I saw Captain *Godfrey* going down the Ladder from the Deck towards the Prisoner's Cabin, but for what I cannot know now. I believe he came from his own Cabin.

**Mr. Recorder.** Whereabout is the Prisoner's Cabin?

*Thomas Williams.* The Prisoner's Cabin is in a Place called the Cock-pit, the lower Steps of the Ladder is just by the Door of the Prisoner's Cabin.

**Mr. Recorder.** And it was that Ladder you saw the Captain go down, as I told *Thomas Williams*?

*Thomas Williams.* Yes, Sir, it was.

**Mr. Ferris.** Mr. *Williams*, you have not told us all the Particulars of Sir *John*'s Treatment between the firing and carrying him to the Barge.

*Thomas Williams.* One of the Men had hold of one Arm, and another the other, and a third Person was behind flowing him along.

**Mr. Ferris.** Where was Captain *Godfrey* then?

*Thomas Williams.* He was just behind him.

**Mr. Ferris.** How near was he to him?

*Thomas Williams.* So near to him as he was near to him as I am to you.

**Mr. Recorder.** How many were there in the Company, as you think, in the Rope-walk, when they were carrying Sir *John* along?

*Thomas Williams.* There were five of the Prisoner's Men, and *Malady* made six, and there were some belonging to the Barge; about sixteen at all.

**Mr. Recorder.** At what Distance was you?

*Thomas Williams.* At a great great Distance; I walked just before them; I saw them take him along in the Manner I have said; I heard Sir *John* cry out Murder several Times as he went, as they took him along the Rope-walk.

**Mr. Recorder.** Mr. *Godfrey*, will you ask *Williams* any Questions?

*Samuel Godfrey.* What Side of the Gun-room did you lie in?

*Thomas Williams.* The Star-board Side of the Gun-room.

**Samuel Godfrey.** Why then it was impossible for you, as you lay in your Hammock, to see any body go down to the Cock-pit.

*Thomas Williams.* Not at all, Sir; the Gunner's Cabin comes out further than ever any known of that Sort.

**Samuel Godfrey.** Are there any other Cabins before the Prisoner's in the Cock-pit? Did you ever see them then how strong they are, and what Particulars are there between them?

*Thomas Williams.* I don't see any other Cabins but the Prisoner's in the Cock-pit; the Cooper lies in the Ship-room.

**Samuel Godfrey.** Where you are in the Prisoner's Cabin?

*Thomas Williams.* No, Sir, not in my Life.

**Samuel Godfrey.** Do you know what about the *Rally* lay, when you brought that Gentleman on board, where did you apprehend the Ship was?

*Thomas Williams.* I did not know the Situation of the Ship, I had no Beliefs to know that, I was but a Fellow-man.

[*Samuel Trott* says so.]

**Mr. Ferris.** Will you give an Account to Mr. Recorder and the Jury of what you know relating to this Business?

*Samuel Trott.* On Sunday the eighteenth of January last I was at a Publick House in the Rope-walk, I heard a Noise of People crying, Drums beating, as if we will knock your Heads out, I stepped up, and asked what Right they had to carry a Man along after that Manner? I followed them, then I asked why, it was a Man of Shipmen who had committed Murder, and they were taking him down to the Ship on do him Justice: other People likewise followed, enquiring what was the Matter: the Gentleman was behind, and ordered them to move more Haste.

**Mr. Ferris.** Look upon the Prisoner in the Bar, Mr. *Godfrey*; is that the Gentleman that order them to move more Haste?

*Samuel Trott.* I believe that is the Man, my Lord. On the Gentleman's ordering them to make more Haste, five or six of them caught him up in their Arms, and carried him along, and as they were got down about the Corner of Mr. *Brown's* Wall, he snuffed upon their making more Dispatch, and then they hurried him as far as Captain *Godfrey's* Dock. By that Time his Clothes were pulled, and showed up his Arm-pits; they put him down, and stripped his Clothes, and then I saw his Face, and knew him to be Sir *John Dore*: He cried out Murder several Times, and said, they were taking him on board to kill him, he believed. As they were going with him along, he cried out to Mr. *Dorley*, For God's sake still me, they are going to murder me. I told Mrs. *Dorley*, it was Sir *John Dore*: She said, she knew him; the Clerk was then over his Face. As they got him further, he called out to a little Girl, to get somebody to assist him, for they were going to murder him. They pushed him along to Mrs. *Nova's* House, and made a little Stop there, and then they brought him to the *White-hale*, where was a Boat; they put out a Plank with Ledges nailed across; he was ordered to go on board the Boat; they got him on board, and put him to sit down in the Stern-sheet; then he cried out, For God's sake, Gentlemen, if any of you know Mr. *Terrill* said in the *College Green*, tell him my Name is Sir *John Dore*. One of the Men put his Cloak and covered him, and before he could say any more, that Gentleman (pointing to the Prisoner *Godfrey*) took his Hand and put it on his Mouth, and would not let him speak any further, and ordered the Boat to be pulled off, which was done; and the Tide making up strong, the Boat got stuck to the other side. I heard that Gentleman (pointing as before) say, Have you not given the Rogues of *Lawrence* Money enough already? Do you want to give them more? I said, take care that they shall never have any more of your now I will take care of you.

**Mr. Recorder.** Prisoners, will either of you ask this Witness any Questions?

*Samuel Godfrey.* No; I never saw the Man before in my Life.

[*Thomas Charnbury* says so.]

*Thomas Charnbury.* On Sunday the eighteenth of January last, between the Hours of four and five in the afternoon, I was on board the Ship called the *Lewins*, lying in Mr. *Thompson's* Dock; I heard a Noise coming over the Bridge of the Dock, and I saw a Man in a Kerseil Coat, and a Parcel of People, some before and some behind, crowd up of him, and he made a Noise. I went towards them, to the west was the Matter, and at Mr. *Stephen Perle*'s house (they said) I stood, what was the Matter? They said, he had killed a Man on board a Man of War, that he had run away; and they had had him before a Magistrate, and he was ordered on board the King's Ship to be carried round to *London* to take his Trial. Mr. *Perry* (on hearing the Noise) came out and told him, says Mr. *Perry*, Gentlemen, do you know what you are about? I would not be in your Coats for substantial Pounds, for it is Sir *John Dore*. They threatened to knock down any that should come near; a Fellow, I take him to be *Malady*, came up to me, and threatened to knock me down several Times; they took and carried him off as far as Captain *Terrill's* Loft, and Warbeck, where he keeps his Hen; and there they rolled him again, and threatened to knock down any that should come near them. Then I saw *Malady*, Dore, yes, here comes the Captain. Immediately I turned about, and saw a Gentleman with his Case pointed in one Hand, and his sword in the other, he had a dark flag Coat and yell-w Blouses, whom I take to be that Gentleman the Prisoner at the Bar. They took up the Man in the Kerseil Coat again, and carried him far as coming out from the lower *College-green* into the Rope-walk: the Prisoner *Godfrey* came up to them, and ordered them to mend their Pace; they took him up again, and carried him as far as *Brown's* Garden, at the lower End of the Rope-walk, as far as they could well carry him, where they stripped his Clothes, and in the mean while the Prisoner *Godfrey* came up to them again, and ordered them to mend their Pace. With much Difficulty they put him between the Gate and Side, and carried him as far as the Warbeck, at the Corner of the Glass-house, there they rolled and stripped his Clothes again. Then they took him up, and carried him down to the *Lime-house*, as far as the lower Part of the Wall below *Madam New's*; and then brought him down to a Place opposite to the King's Head, and there they put him on board a Boat (I take to be the Man of War's Barge) having ten Oars, and they landed him on. After, the Prisoner *Godfrey* went into the Boat after him, and let Sir *John* on the Star-board-side, and the Prisoner *Godfrey* on the Larboard Side; then Sir *John* cried out, Murder! You Gentlemen that are on shore, pray



tell Mr. Jarvis Smith that my Name is *Dinwiddie*, and before he could say *Goodere*, the Gentleman took up the Flap of the Cloak, threw it over the Face of Sir *John*, and Rapped his Mouth; and says he, I will take care of you, that you shall not spend your *Life*; and ordered the Barge to be put off: And then he took the Gentleman's Cloak from his Shoulders, and put it on his own.

Mr. *Rowland*. Who was it that Rapped his Mouth with his Cloak? Mr. *Chamberlain*. That Gentleman the Prisoner at the Bar. The Boat was so full, that many People in it, that they were obliged to row but with eight Oars. And when they proceeded down the River, it being about three-quarters Flood, and the Gentleman continually crying out, they went out of sight, and I saw no more of them.

(Mr. Jarvis sworn.)

Mr. *Vernon*. *My Dear*, I thank you live at the *Line-Hill*.

Mr. *Darby*. Yes, Sir, I do.

Mr. *Fer*. What do you know of this tragical Affair?

Mr. *Darby*. I saw Sir *John Dinwiddie* forced along between two Men, he crying out Murder, Murder, for the Lord's sake take me, take me, for they are going to kill me!

Mr. *Fer*. Pray what were they doing to him at that time?

Mr. *Darby*. Forcing him along, Sir, one had him under one Arm, and another under the other.

Mr. *Fer*. Did you then know him to be Sir *John Dinwiddie* *Goodere*?

Mr. *Darby*. Yes, Sir, last Summer we mended his Chair for him. I know it in a very well.

Mr. *Fer*. You say you knew Sir *John*, pray did you know this Gentleman? (pointing to Mr. *Goodere*.)

Mr. *Darby*. There was a great many other Persons there; they told me that the Captain of the *Min of War* was behind them, which I believe to be the Gentleman at the Bar. He was dressed as a dark Death-coloured Coat, and his Waistcoat turned up Gold.

Mr. *Fer*. What further did you see?

Mr. *Darby*. I saw them hurrying him on board the Boat, but I did not go any further than over-against my own Door; but when they were turning the Boat, I heard him cry out, but what he said I know not.

(William Dapen sworn.)

Mr. *Fer*. Give an Account of what you know of this Matter.

William Dapen. On Sunday the eighteenth of January last I was at the Sign of the *King's Head*, upon the right-hand side of the *Red Lion* as you go down to the *Hot Well*, with a Friend of mine, a Man that works with me, drinking a few Ale, there was a young Woman, she was residing at the *Windmill*, she told us, she heard a great Outcry, we heard the fairs, we went out, saw a Company of Men forcing a Gentleman along; I saw Captain *Goodere* the Prisoner at the Bar coming behind them: when they came down to Sirger's Ship, they gave out a Report, that the Gentleman had murdered a Man on board a Man of War, and they were taking him on board for Justice. They put him on board the *Yawl*, and Captain *Goodere* stood by whilst they did it. The Gentleman cried out, For God's sake take and acquit Mr. *Jarvis Smith*, for I am undone, they will murder me. I went into the House again; the People advised me to go to Mr. *Jarvis Smith*, and inform him of it: as I came home I called at Mr. *Smith's*, and told him what I had seen and heard, and he told me he would see about it.

Mr. *Fer*. I'll be glad to know whether upon the Gentleman's crying out you saw any thing, and what, done to him?

William Dapen. I saw the Captain, the Prisoner at the Bar, put his Hand and Rapped his Mouth.

Mr. *Fer*. Are you positive you saw that?

William Dapen. Yes, I am.

(Theodore Court, Master of the Ship, sworn.)

Mr. *Fer*. Will you tell Mr. *Rowland* and the Jury what you know concerning the Death of Sir *John Dinwiddie* *Goodere*?

The Court. On the eighteenth of January last, being Sunday, the Barge went up to the Captain *Goodere* from Sir *John*, and about seven of the Clock in the Evening, came on board, and when he came into the Gangway, says he, How do you all do, Gentlemen? I brought me, Gentlemen, from going this right way to-night, for I have brought an old mad Fellow on board, and I must take care of him. I saw a Gentleman with a Black Cap coming up the Ship's side, and his Grooms shocked me, so that I could not help him; he looked much surprised, as a Person used to be: As soon as he was on board, he was taken into Cabin, and carried by the Captain's Orders down to the Cock-pit, and put into the Purser's Cabin, and a Landlord ordered upon him; and I saw him no more at that Time. Next Morning I was told that the Captain's Brother was murdered, and that the Captain had given *Charles Phipps* and *Mahony* leave to go on board.

Sir *Rowland*. By whose Direction was he put into the Purser's Cabin?

The Court. The Captain himself went down, and for them put him in.

Mr. *Fer*. Whereabout on the Ship is the Purser's Cabin?

The Court. In the Cock-pit.

Mr. *Fer*. Was it a Place where Gentlemen who came on board commonly lay?

The Court. No, Nobody had laid in it for a considerable Time. The next Morning the Cooper met me, and said, Here is five things to-night, Mr. *Court*? Why, what is the Matter, said I? Why, said he, about three o'clock this Morning they went down and murdered Sir *John*. The Ship was in an Upriser; the Cooper said, if Mr. *Perry* (the Lieutenant) did not find the Captain, he would write to the Board: We had several Commitments in the Ship about it. The Captain lent for me to breakfast with him; I accepted of his Invitation: I don't say he behaved with a very good Name to all the People on board. About Ten o'clock Mr. *Perry*, myself, and the other Officers, with the Cooper, confabulated about furling the Captain. Mr. *Perry* caution'd us not to be too hot, for, said he, if we fance the Captain before we know Sir *John* is dead, I shall be broke, and you too. We went for the Carpenter, and desired him to go down and open the Cabin-door, the Carpenter stood there having laid it was locked; the Carpenter went down, opened the Cabin-door, and came up, and told Sir *John* was murdered, and that he lay on his Left-side, with his Leg up crooked. I told them, Gentlemen, there is

nothing to be done before the Coroner comes; and therefore we must not touch him: Whereupon the Door was ordered to be unlocked: We then consulted how to take the Captain, and a Method was agreed on for that purpose. And as soon as the Captain was taken, he declared he was innocent of it, that he knew not that his Brother was murdered. When the Coroner came, I saw the Deceased, and my Heart ached for him.

Mr. *Rowland*. Who was it that put the Gentlemen upon Sir *John*?

The Court. The Captain ordered it to be done.

Mr. *Fer*. Is it usual to place a Gentlemen at the Purser's Cabin Door?

The Court. No, it is not, unless there be somebody there under Constraint.

Mr. *Fer*. Is there any other Cabin near the Purser's?

The Court. Yes, there is the Ship-Room just by; there the Cooper and his Wife lay that Night: there is just a little Partition of about half-inch Deal, parting the Ship-Room from the Place where Sir *John* lay confined.

Mr. *Fer*. Pray, will you tell us whether any, and what Difficulties passed between Mr. *Goodere* and you, about furling; and when it was?

The Court. Sir, in the Morning he asked me, Will the Wind serve to furl? He said, he had another sailing Letter from the Lords of the Admiralty to furl as soon as possible. I told him that the Wind was West-South-West, and that we could not go out to Sea, for no Pilot could take charge of the Ship, I believed. And as this is a Harbour where a Pilot is allowed, I don't pass for this Place; otherwise I must have obeyed his Orders.

Mr. *Fer*. Did he enquire you how far, or to what Port, he would have you sail?

The Court. Yes, he said, if he got no further than the *Melrose*, he did not care; and asked me, if it was fair riding there. I told him, it was not; for it was foul Ground for such a Ship to coast.

Mr. *Rowland*. Mr. *Goodere*, will you tell us what Questions? *Semuel Goodere*. What Cabins are there in the Cock-pit?

The Court. I know no Cabins there but the Purser's Cabin and the Ship-Room, Sir.

Mr. *Fer*. Call Mr. *Williams*.

(William Williams sworn.)

Mr. *Fer*. Mr. *Williams*, have you a Watch in your possession belonging to Mr. *Goodere*?

Will. Williams. I have a Watch in my Possession.

Mr. *Fer*. Please to produce it, and let us know how you came by it?

Will. Williams. I had it from a Vault in *Black-friar*.

Mr. *Fer*. How came it to be searched for there?

Will. Williams. The Night this thing was under Examination, I was at the Council-House, and looked out from the Bookstore Room on the Bank, was there under Examination: as this person at that time was a Watch and some Money left in a House. Upon which the Person was sent down, and *Calley's* Wife at first seized the Watch, but not the Money; but at last, after close Examination, she confessed that she had thrown the Watch into the Vault. Upon which, by the Order of Mr. *Alderman Day*, I, with a Mason, opened the Vault; where, on Search, I found the Watch, and took it out. Here is the Watch; but whole it is, I know not.

Mr. *Fer*. Now I desire that Watch may be shewn to Mr. *Court*. [The Watch is delivered to Mr. *Court*.]

Mr. *Fer*. Now you have looked upon the Watch, tell us if you own, whole it is.

The Court. I can't swear positively to it; but I believe it was the Captain's Watch, he had such a one.

Mr. *Fer*. Did Mr. *Goodere* at any time a Gold Watch about him?

The Court. The Captain did not usually wear a Gold Watch; but I have seen such a Watch as this, hanging up in the Captain's Cabin. I believe it to be the same.

Sir *Rowland*. Mr. *Court*, you was asked by Mr. *Goodere*, how many Cabins there are in the Cock-pit?

The Court. There is the Steward's Room, the Purser's Cabin, and the Ship-Room.

Semuel Goodere. Where is the Steward's Room?

The Court. That is the Place where the Criminal stands; and there is a Place on the other Side where the Surgeon lies.

Semuel Goodere. What Persons were in that Place that Night, do you know?—The Court. The Surgeon, I suppose.

Semuel Goodere. What other Persons were in any one of the Cabins that Night?—The Court. The Cooper and his Wife.

Semuel Goodere. Has the Cooper a Wife?—The Court. I believe so.

Semuel Goodere. How long before the sixteenth of January did you see the Ship?

The Court. Thursday the fifteenth of January.

Semuel Goodere. How were the Bearings then?

The Court. (Looking on his Journal.) *Point-Point West by South, Drom-land North-west and by West, distant by Computation about four Miles; and the Point to the Westward of the *Held's* Mouth South-South-East.*

Mr. *Rowland*. Were those the Bearings on the Eighteenth too?

The Court. I know no Difference; it is said here, also, that if there had been any Variation, I should have taken notice of it.

Mr. *Fer*. In what Part of the River did the Ship be when Sir *John* was murdered?

The Court. She lay in *King-Road*.

Semuel Goodere. Do you know the *Denny*?—The Court. Yes, I do.

Semuel Goodere. Suppose there was a Strait Line drawn from the *Stewards* Corner of that Island to the North part of the Water of *Alton*, would the Ship *Ruby* have been on the East or West part of that Line?

The Court. As to that I am not a Judge, unless I saw a Strait Line drawn.

Mr. *Rowland*. Mr. *Court*, how long did the Ship continue in that Mooring?

The Court. I never saw'd the Ship the Sunday following.

Semuel Goodere. Did the Wind then blow eitherly or Westerly?

The Court. The Wind blew hard Westerly the Sunday.

Semuel Goodere. As to the Difference from the *Denny*, I believe, you saw right enough; but I have a Gentleman here who hath taken a Survey of the

Bank



River, and the Situation of the Ship, as it lay Sunday the eighteenth of January, was in the River Swans, very far Eastward of the Water of Arve.

*Mr. Perce.* Mr. Recorder, by Mr. Gardner's private Enquiries, he found he was putting his and his Fellow-Prisoner's Defence on the Facts of the Company; I hope he has found better Proof to go on: for if not, there I doubt will stand him in very little stead. It appears in Proof, that the Ship was situated in Key-road, when this Murder was committed. Now Key-road, we all know, has been 20 times reported and allowed to be within the local Limits of the City and County of Bristol; and the City Process runs thither, which flows it to be within the Franchise of the City, and the Sheriff of Bristol do there constantly execute Writs and other Process from above, which flows it to be within their Bailiwick as a County, while Bristol and Clevedon are both attached and pointed out by R-pat writs and constabulary Officers, which flows it to be within the Limits of their Limits, after other Marks are effected in and out by Time.

*Mr. Staphord.* I don't at all question but this City has great Powers, and its Limits are undoubtedly far north by Chester.

*Mr. Perce.* I should be very sorry to find the Jurisdiction of a City (whose Rights are dear to me as my own) broken by a Side-wind, and lose an Attempt of this Nature will not be suffered.

(Daniel Webster twice.)

*Mr. Perce.* I think you was one of our Company that was at the White-Hart upon Tuesday the twelfth of January last?

*Daniel Webster.* Yes, Sir.

*Mr. Perce.* Will you give Account by whose Directions you came up there?

*Daniel Webster.* On Tuesday the thirteenth Day of January last the Boat and Barge were ordered up to Bristol, but upon what account, I know not. I was ordered to go to the White-Hart to attend the Captain, and there was Mahony and the Prisoner's Men drinking but Flip. I knew nothing of what they were up to. I saw a Gentleman come out of Mr. Smith's, I suppose it was Sir John Dineley Goddard; he mounted his Horse, and had Pibbs before him, and his Servant followed him with Pibbs also. Then some of the Men ran out, and Captain Goddard went out after them, and ordered them to follow the Gentleman. I had there till the Captain came back again, and I knew nothing more of what was said or done there.

*Mr. Perce.* Will you give an Account what happened on the Sunday following?

*Daniel Webster.* On Sunday the eighteenth Day of January about seven o'clock in the Evening the Barge came along-side the Ship with the Gentleman in it, I stood in the Gang-way to receive him; when he came up, I heard him to make a Motion, and the Captain said, I have brought a Mahony on board, bring him along, I will bring him to his Devil by-and-by. I saw them take him along the Gang-way. You must not mind what he says, said the Captain; and he was ordered down to Sir John's Cabin. I was ordered to stand there. About twelve o'clock the Captain sent for me to come up to him, and I had down my sword and went up, and Mahony was there with him; and there was a Bottle of Rum and a Glass before them; the Captain asked me to drink a Dram, I thanked him and drank. He asked me how his Brother was; I told him he groaned a little, says the Captain, I know the Reason of that, he is wet, and I am coming down by-and-by to kill him with dry Backings. I left the Captain and Mahony together. Some time after the Captain came down to me, as I was at my post at the Parlor's Cabin; he asked if his Brother made a Noise? I told him not: upon which the Captain listened a little near at the Door, and then said, Give me the Sword, and do you walk upon deck, for I want to speak to my Brother in private. Some after that, Mahony went down, and very soon after Mahony was down, I heard a great knocking in the Cabin and the Gentleman cry out Murder! I then thought the Gentleman had been stung of his mad Fit, but now I suppose, they were then strangling him. As I was walking toward-fire in the Gun-Room, I looked down, and saw the Captain take the Candle out of the Landmark, which was hanging up there, and he put the Candle into the Cabin.

*Mr. Ricardo.* Whose was his Gun? when you heard the Cry of Mahony?

*Daniel Webster.* In the Cock-pit at the Parlor's Cabin-Door, with the Sword in his Hand.

*Mr. Ricardo.* And then at that Night was that?

*Daniel Webster.* It began to rain, and there I lit a Candle at the Landmark in the Gun-Room, and was going down to the Captain with it, to tuppard against the without Light, and as I was going down with it, the Captain said up his sword, raised it, and said, Go back, and Run where you will.

*Mr. Recorder.* You said, that Sir John Dineley cried out Murder? Was that before you offered me a Challenge? Captain?

*Daniel Webster.* Yes, Sir, it was before.

*Mr. Recorder.* How long?

*Daniel Webster.* About a Quarter of an Hour.

*Mr. Recorder.* How long did the Captain offer you?

*Daniel Webster.* About three or four Minutes. About the Captain had ordered me to go back, he called for a Candle, and I lit one down, and he gave me the Sword, and bid me stand upon the Post, and said he, If my Brother makes any more noise, I'll run down and find him, and he looked the Parlor's Cabin-Door, and took the Key away with him. And in the Morning in John's Room, the Cooper and I consulted together about it, and I was willing to know, if Sir John was dead, or not. And when we peeped into the Cabin, we saw him lying in a very odd sort of a Posture, with his Hat upon his face, and one of his Legs bent crooked, upon which we concluded he was dead.

*Mr. Ricardo.* How long was you off your Post till you did so?

*Daniel Webster.* I don't tell exactly.

*Mr. Recorder.* It would be as well as you can.

*Daniel Webster.* About three Quarters of an Hour.

*Mr. Recorder.* And could you see who was at the Parlor's Cabin-Door all that time?

*Daniel Webster.* Yes, Sir, I saw the Captain stand at the foot of the Ladder at the Door, with a drawn sword, from the time I went up to the Yard. V.L.

time I came down again, he looked the Door, and carried the Key away with him.

*Mr. Perce.* Pray, were there any Bolts on the Parlor's Cabin-Door? *Daniel Webster.* Yes, there were Bolts on the Door; it was put on from after Sir John came on board: Sir John was in that Cabin when they were put on.

*Mr. Perce.* You say you heard a Noise and Clamour of Murder, how far was you from the Cabin-Door when you heard that Cry of Murder?

*Daniel Webster.* I was walking in-and- to the Gun-Room.

*Mr. Perce.* How far is that from the Parlor's Cabin-Door?

*Daniel Webster.* About as I am from you.

*Mr. Perce.* Whom did you see go into the Parlor's Cabin to Sir John?

*Daniel Webster.* I saw Mahony go in there.

*Mr. Perce.* Did you see any one else go in to Sir John's Cabin?

*Daniel Webster.* No, Sir, I did not. I saw Mahony go in just before the Cry of Murder, but I could not see who else went in.

*Mr. Perce.* Do you know any thing about Mahony's Cabin?

*Daniel Webster.* Yes, Sir, I did see some happen there. We went and looked him. As soon as he was laid hold of, he cried out, Hey! Hey! what have I done? We told him his Brother was murdered, and that he had done Murder in an. He said, what if the Villains have murdered my Brother, can I do it? I knew nothing more.

*Samuel Goddard.* Did you go into the Cabin at any?

*Daniel Webster.* No, Sir, I don't say you was in the Cabin.

*Mr. Recorder.* The Witness does not say he saw you in the Cabin, but at the Door, and with a sword in your Hand, and that you handed a Light after the City of Murder was over?

*Samuel Goddard.* I could not have been in the Cabin without Mahony's seeing me go in, because he stood at the Bulk-head of the Gun-Room.

*Mr. Recorder.* Mahony, will you ask this Witness any Questions?

*Matthew Mahony.* Are you certain that I was in the Cabin when you heard the Gunshot?

*Daniel Webster.* I am positive you was there in the Parlor's Cabin, when I heard the Murder end out.

(Daniel Webster twice.)

*Mr. Perce.* I think you are the Carpenter belonging to the Ruby Man of War?

*Daniel Webster.* Yes, Sir, I am.

*Mr. Perce.* Give an Account to Mr. Recorder and the Jury of what you know relating to this Business.

*Daniel Webster.* The eighteenth of January last, about seven o'clock in the Evening, the Captain came on board in the Barge; as I attended him, I observed he looked in a pleasant Humour, he came upon the Deck at once, and said he had brought a poor crazy Man on board, who had been the Head of himself and Family, and that he had now brought him on board to take care of him. He took him down to the Cock-pit, and having been there a little while, one of my People came and asked for some Bolts, I said, What for? He told me, it was to put on the outside of the Parlor's Cabin-Door, to hold the crazy Gentleman in. I gave him a Bolt; after he had nailed it on, he came and wanted another; I had another, gave it to him, and went down to see the Bolts put on. Sir John asked out, What are you doing, raising the Door up? I answered him, I ordered the Door to be opened, to turn the Points of the Nails. The Door being opened, Sir John asked whether the Carpenter was there? I told him I was the Man. The Gentleman said me anybody told you there, however, I went in, while they were at the Points of the Nails. Sir John bid me sit down, and asked me, What does my Brother say by bringing me on board on this manner, to murder me? No, Sir, I say I, I hope not, but to take care of you. He asked me, if his Brother told me that he was mad? I told no more of him till next Morning.

*Mr. Perce.* And what did you do for that?

*Daniel Webster.* Next Morning the Lieutenant sent me down to see if Sir John was dead. I went down, and asked the Centinel for the Key, he told me the Captain had been there in the Night, and had taken away the Key in his Pocket. I broke open the Cabin-Door, and Sir John was lying on one side dead, with his Right Leg half up bent, his Hat was over his Face, with Blood being mixed about his Mouth and Nose. I went down up, and told the Lieutenant of it.

*Mr. Perce.* By whose Orders did you put the Bolts on the Door?

*Daniel Webster.* One of my People came to me, he said, and told me he was ordered by the Captain to put the Bolts on; and none of them ever came for any thing to be done, without an Order of an Officer.

(Edward Jones twice.)

*Mr. Perce.* Mr. Jones, I think you are the Cooper of the Ship Ruby?

*Edward Jones.* Yes, Sir.

*Mr. Perce.* Was you on board upon Sunday the eighteenth of January last?

*Edward Jones.* Yes, Sir, I was.

*Mr. Perce.* In what Cabin did you lie that Night?

*Edward Jones.* I had my Cabin, but I made hold to lie in the Stowage that Night, having my Wife on board.

*Mr. Perce.* Pray what is that you call the Stow-Room?

*Edward Jones.* It is like a Cabin.

*Mr. Perce.* How near is the Stow-Room to the Parlor's Cabin?

*Edward Jones.* Nothing but a thin Deal-Partition parts it from the Parlor's Cabin.

*Mr. Perce.* Will you relate to Mr. Recorder and the Jury, when you know about the Murder of Mr. Goddard's Brother? Tell me what you know concerning it.

*Edward Jones.* On Monday or Tuesday before this happened, the Captain bid me, to go, get for me the Parlor's Cabin cleaned out, for he said he expected a Gentleman to come on board. I cleaned it out, and on Sunday Evening the Gentleman came on board, when the People on Deck said, Co. put, for a Light. I brought a Light, and the Captain going down the Cock-pit Ladder, the Gentleman was laid down: he complained of a Pain in his Head by their kneeling him on board. The Captain asked him, if he would take a Dram? He said















*Mr. Recorder.* Mr. Gardner, will you ask this Witness a Question? *Mr. Gardner.* Yes, Sir: Is all that called King-Road within the Liberty of the City of Bristol?

*John Pratt.* Yes, it is.

*Samuel Gardner.* Are you sure of it?

*John Pratt.* I know where the ship *Roly* lay within the City of Bristol.

*Samuel Gardner.* How do you know that?

*John Pratt.* Because I have been down with the Mayor to the Helms.

*Mr. T. W.* Call Mr. Laidlaw.

[*Mr. Laidlaw rises.*]

*Mr. Fenn.* What Office are you, Mr. Laidlaw?

*Laidlaw.* I have been an Officer in this City about sixteen Years: I have served Town Aldermen, Town Wardens, and Wardens made out up on Writs from the Courts of Westminster-Hall, and the Admiralty, in King-Road: And any Part of King-Road on the Southward of the Docks, we always take it into the Liberties of Bristol.

*Mr. Fenn.* Mr. Recorder, we have done.

*Mr. Recorder.* Mr. Gardner, and Matthew Mahony, the Counsel for the King, has your trial with his Evidence, and now is your Time to enter up a plea of Defence.

*Samuel Gardner.* May it please your Lordship, I shall endeavour to give you and the Jury as little Trouble as possible. I shall call Evidence to prove that the Gentleman was a Madman, and disordered in his Senses, and I was doing my best to take care of him.

[*Call Mr. Guthrie.*]

*Mr. Recorder.* What do you call her to prove?

*Samuel Gardner.* I shall be to prove, that before my Brother was taken on board, I was to take an Upper-room of his to put him in, where he might be taken care of in due Manner.

*Mr. Recorder.* When, Mr. Gardner, do you admit then that you did take your Brother on board?

*Samuel Gardner.* I do admit that I carried my Brother on board. I went in the Boat along with him.

[*Mr. Guthrie rises.*]

*Samuel Gardner.* Mrs. Gardner, did I not speak to you a Footnight or three Weeks before my Brother was taken on board the Ship, to have a Garret or you to put him in, and that *John* was to have five Pounds a Month to take care of him?

*Mrs. Gardner.* The Professor, Captain Gardner, did ask me if I had not a Garret to let him keep his Brother in, for that he was a Madman: And Captain Gardner asked me if I bore that he intended to take and keep his Brother as a Madman.

*Samuel Gardner.* Whether I did not tell you that Mahony was to take care of my Brother's Footnight or three Weeks before he was taken on board? Speak to the Jury as near as you can recollect it; and whether you know that Mahony was to have five Pounds a Month, and that I made no manner of object of it, and that I endeavoured to take care of him as a Madman?

*Mrs. Gardner.* Sir, I have already said that you spoke to me about it: I went to give your Brother in, but what you mention about Mahony, I know nothing of.

*Mr. Fenn.* Pray, is King-Road in the Road to your House?

*Mrs. Gardner.* No, Sir.

*Mr. Fenn.* Was your Garret a proper Place of Accommodation for a Gentleman, and one who was esteemed an English Baronet, think you? Pray, do you keep a Madhouse, Madam?

*Mrs. Gardner.* No.

*Mr. Fenn.* Does not you think such a Confinement would have been the way to have made him mad?

*Mr. Recorder.* Was any Person as you know to have taken care of him as your Garret?

*Mrs. Gardner.* I have heard the Captain talk with his own Doctor about it.

*Samuel Gardner.* I shall give you and the Jury as little Trouble as may be. I have an Evidence in relation to Mahony and White's going away at Four o'Clock in the Morning, because it is charged that I did then away. The last went away in the King's Service to bring Letters.

[*Mr. Marsh rises.*]

*Samuel Gardner.* Did you go ashore in the Morning about the King's Business, or what Business did you go about?

*Mr. Marsh.* I had an Order about Eight o'Clock the Night Sir John was brought on board to go up to the Admiralty to Bristol for the Letters from the Admiralty, and about Four of the Clock in the Morning I was called up to go, but my Lieutenant I met much disordered, and did not come to his Office. I waited on the Lieutenant, and told him, that Mahony and Mal. I had they had Liberty to go on shore, that the Captain had given them Liberty to go; the Lieutenant did, he knew nothing of it. He said, I know any way, but I carry any body off, I am, I was going to the Captain and ask leave. I waited the Captain, and asked him, if it was Mahony had Liberty from him to go on shore. And he told me, let them go.

*Mr. Marsh.* Did you go upon the King's Business, or on purpose to take your leave?

*Mr. Marsh.* I was about the King's Business.

*Mr. Marsh.* What time did Sir John was brought on board, that Mr. Gardner was brought up?

*Mr. Marsh.* Yes, Sir, I was.

*Mr. Fenn.* I am very glad, did you go up with you, besides Mahony and Mr. Marsh?

*Mr. Marsh.* No, Sir, I did not.

*Mr. Fenn.* Did Mr. Gardner give you Orders to put them on shore in the Boat?

*Mr. Marsh.* I was between Mr. Marsh and Mr. Marsh, the Captain did give me Orders to put them on shore in an particular Place.

*Mr. Fenn.* Was that publick or private?

*Mr. Marsh.* I put them in the Boat, Sir, about six of the Clock in the Morning.

*Samuel Gardner.* Now, my Lord, Sir, I shall show that Mahony was.

had Mahony as brought that Day by Appointment, to receive some Wages that was due to him for his purpose I shall call Mr. Dugg.

[*Abel Dugg, Keeper of Newgate, rises.*]

*Samuel Gardner.* Do you know a young man of Captain Mahony's, and of Mahony's coming to Bristol on the *Monday* to settle an Account with him?

*Abel Dugg.* There was one Captain *John Mahony* who sailed into the Port, and on his coming was charged at a Debt of 7000 in his Hands, at the Suit of some Gentlemen in London, in an Action of three or four hundred Pounds. Mahony was one of his Bailiffs until he was paid, and he charged the said Mahony with an Action for his Wages. Captain Mahony had a debt to make up the money with Mr. Dugg. I went to the Captain of the *Monday* at the *Taylor* or *Wharf* where this Affair happened, which was the last time I ever saw him, so the debt of his Knowledge. The Captain said he would meet me the *Monday* following, in order to settle the Difference.

*Mr. Fenn.* Was Mahony appointed to meet you that Day or not?

*Mr. Recorder.* About the *Monday*, Was Mahony to come that *Monday*?

*Abel Dugg.* The Captain said, a *Monday*, at 7 o'Clock, to meet on the *Monday*, and I told Mr. Taylor the Account, that I always went to come on them that Day, to make up the matter between him and Mahony.

*Mr. Fenn.* I would ask you another Question, Had Mahony any Affairs to make up at that?

*Abel Dugg.* No, I know nothing of that.

*Samuel Gardner.* No, I did not go to see him.

*Mr. Recorder.* What day was that?

*Samuel Gardner.* Tomorrow, at the house, at Sir John Dingley.

[*Bridge King rises.*]

*Samuel Gardner.* Mr. King, will you give the Court an account of what you know of the Livery of my Brother Sir John Dingley?

*Bridge King.* Please you, my Lord, I think he was paid, for he would get up at two or three of the Clock in the Morning, and with a Servants up, and fall a singing; and then he would go to bed again, and for he was but twelve o'Clock at Night, and he did all Day. He would find his Boy out at seven his Grounds to pick up stones, and have the Warrant-bearer calling about the Streets at a Sunday, to knock out of the Bell to call his Servants up to his Bed-side, and when they were come up, he would ask them what they did there, and when they were come up to thank him? He himself had some over all his Grounds on a Sunday to pick up sticks, and had sent his Servants to Market when they were, and he would be busy in every thing, and hang on the Post himself, as if he had been quite raving mad.

*Mr. Fenn.* Did you live as a Servant to Sir John?

*Bridge King.* I lived as a Servant with him in London, and he came down for the Air to Salisbury, to bring me down to go to Bath.

*Mr. Fenn.* How long did you remain with him?

*Bridge King.* A few months.

*Mr. Fenn.* And how much time were to live so long with a Madman?

*Bridge King.* He did not go mad for some of you, I do not. Have you lived any time in Bristol?

*Bridge King.* No.

*Mr. Fenn.* Yes, I suppose you came to see him from London.

*Bridge King.* Yes, I did.

*Samuel Gardner.* Do you believe he was a Madman?

*Bridge King.* In the Actions that I have seen by him, I have reason to think he was a Madman.

[*Mr. Mary Seaward rises.*]

*Samuel Gardner.* Mrs. Seaward, will you tell the Court and the Jury what you know of Sir John being a Madman?

*Mary Seaward.* Sir John had me for a Housekeeper in London, and told me he had a great many debts, and he wanted a Housekeeper. When he brought me, he was a Madman, and he was a Madman, where he had a great deal of Company, frequently. When I came there, I saw that he was not well, and he had told me, for, instead of a great many debts, he had but one; a poor old shattered House, ready to sink, and about one's ears, and the Household Goods all to pieces: He was a Madman: For if I had followed his Directions in any thing I should have done mischief. He had sent me and the rest of his debts to the Treasury-Market, when there was none; he had raged the Bell, and he had sent me to come to his Bed-side to him, and when we have come up to him, he had asked us, what we did there? So, for, you called me up, and he had said he did not, and after we had been there a quarter of an hour, he would take a Knife, Fork, or Glass, or anything that came in his way, to throw at us, asking of us, What did we come to rob him? And I was afraid of my Life, to live with him. I do believe he was a Madman, or else he would never have asked us to bed: he would go into the Kitchen, and take the Pot, and hang it on the Fire. I believe him a Madman by his Actions.

*Mr. Fenn.* And could he therefore be charged himself like a mad Dog, think you?

*Mary Seaward.* I know nothing of that, Sir.

*Mr. Fenn.* How long did you live with Sir John?

*Mary Seaward.* Three Months.

*Samuel Gardner.* Call Mr. Robert Cook.

*Mr. Recorder.* What do you call us to prove?

*Samuel Gardner.* My Lord, in order to prove Sir John Dingley a Lunatick. Mr. Cook, will you give an Account to my Lord and the Jury what you know of the Livery of Sir John Dingley?

[*Robert Cook rises.*]

*Robert Cook.* My Lord, I have served Sir John at *Chelmsford* for some Years: I have been for Sir John in his Company; I have found him do several Acts of Lunacy, as a Madman.

*Mr. Fenn.* When, Sir, in time?

*Robert Cook.* I have in *Cambridge*, when I am at home.

*Mr. Fenn.* And in what manner?

*Robert Cook.* I have often seen him to be Madly.

*Mr. Fenn.* What kind of Lunacy?

*Robert Cook.* A Mad Office.

*Samuel Gardner.* How long did you not let him and the Jury much more trouble. I am entirely in your hands, and I am not a Madman that is perfect at the Death of Sir John Dingley.



*Mr. Recorder.* Don't deceive yourself; though they have not proved that you were actually in the Cabin, when Sir John was murdered, yet they have given Evidence of that, which [if the Jury give Credit to] will amount to Presence in the eye of the Law.

*Samuel Goodere.* I shall now call five Witnesses to my Character, and likewise to shew how improbable it is, that I should be guilty of the Murder of my Brother.

*Call Mr. Frisford.*

*Mr. Frisford.* I have known Mr. Goodere, the Prisoner at the Bar, many Years: He always bore the Character of a good Husband, a good Neighbour, and a kind Friend.

*Samuel Goodere.* I shall call a Person who saw the Will of Sir John Dingley; and then say how very much I should be the saddest Man in the World to commit a Murder that I knew would be Forty Thousand Pounds Damage to me. It was my business, considering the Circumstances of the Will, and that I was Sir John's Heir at Law, at all events to preserve him. Call Mr. Wadham.

*(Reverend Mr. Wadham rises.)*

*Samuel Goodere.* Mr. Wadham, did not you see or hear the Contents of Sir John Dingley's Will, and did not you tell me precisely after the Will was made the Contents of it, and how long was that before his Death?

*Mr. Wadham.* It was about three Months, or half a Year before his Death, to the best of my Knowledge. It was so long ago, as you died with me at Gougham.

*Samuel Goodere.* Did you not inform me, that that Will did cut me off of every thing, and gave the Estate to the Pain; and that Sir John told you so?

*Mr. Wadham.* Sir John told me that he had made his Will, and had cut his Brother off from every thing, and that he had given the Estate to the Pain; of which I told Mr. Goodere soon after.

*Samuel Goodere.* How long ago?

*Mr. Wadham.* I can't tell exactly; about half a Year or three quarters of a Year, it might be.

*Mr. Per.* They have been giving Sir John the Character of being a Lunatick; I think, Sir, you are Minister of Gougham, and methinks, I presume, I have been pretty conversant with Sir John, and a frequent Witness of his Behaviour in that Neighbourhood; be pleased therefore to speak what you know, as to his Sanity or Insanity of Mind.

*Mr. Wadham.* Sir John's Character in my opinion hath been very much misrepresented to the World. During my Acquaintance with him, I have found him to be a good Neighbour, and a kind Friend: He was a Man of strong Passions; if any one affronted him, he would let the Party know that he did resent it. All his Tenants of our Country, and those I have conversed with, say that he was one of the best of Landlords.

*Mr. Per.* I don't ask you, Sir, concerning his moral Character; but whether he was in his Senses, or not?

*Mr. Wadham.* In his Senses! I saw him last Christmas, he was making up his Accounts with several of his Tenants; he was then in very good Understanding.

*Mr. Jos. Fray.* Did you ever know him visited with Lunacy?

*Mr. Wadham.* I never did; but on the contrary, I take him to have been a Man that always had his Senses in a regular Exercise.

*Mr. Per.* Do you know, Sir, whether there was any Misunderstanding between the two Brothers?

*Mr. Wadham.* There has been a long Misunderstanding between them.

*Mr. Per.* What have you heard the Prisoner Mr. Goodere say, in relation to Sir John's making his Will?

*Mr. Wadham.* I believe he told me, that Sir John had not power to make a Will: I told him it was my Opinion, if they would be reconciled together, Sir John's Will would not stand.

*(Mr. Thomas rises.)*

*Samuel Goodere.* Mr. Thomas, how long have you known me, and what was my Character?

*Mr. Thomas.* I have known the Prisoner, Mr. Samuel Goodere, a great many Years, have very often been in his Company: I never found but that he ever behaved with all the Good-nature that possibly could be. I always took him to be a good-natured well-behaved Man, and he is a Man well-beloved in his Country.

*(Mr. Abfield rises.)*

*Mr. Abfield.* I have known Mr. Goodere a great many Years, I never heard any ill of him till this Affair; he is reputed in the Country of a general good Character. I have been concerned for him at several Suits, I never knew any ill of him.

*Mr. Per.* Pray, Sir, what have you heard Mr. Goodere say, concerning his Brother's cutting off the Estate of his Estate?

*Mr. Abfield.* I have heard Mr. Goodere say, that his Brother had no power to cut off the Estate, and that he would fix the Recovery aside; I have heard him say that forty times.

*Mr. Per.* What is your opinion as to the Sanity or Insanity of Sir John?

*Mr. Abfield.* I never thought him a Mad-man; I always thought him one of the best Understanding in the whole Family.

*(Reverend Mr. Rogers rises.)*

*Mr. Rogers.* I have been acquainted with the Prisoner Goodere several Years; I know he hath behaved very well, done good Offices to all Mankind; and I never heard any other of him.

*(Mr. George Forrester rises.)*

*Mr. Forrester.* The Prisoner Goodere hath been my Neighbour for fourteen or fifteen Years: he hath always behaved well in his Neighbourhood, and has a very good Character; he constantly attended his Church twice a-Week, and would be there at Prayers almost every Day; he was always a sober Man, and a good-humoured Gentleman. I thought him to be a good Man.

*Samuel Goodere.* Mr. Recorder, I would not give you and the Jury any more trouble in relation to my Character; all I have to say further is, my being desirous of Evidence in my Behalf, by reason of my Disorder and the Sickness in the Gaol, which hath prevented my Friends from coming to me to advise me about making my Defence; and also of having several Witnesses upon board the Ship, which might have been of great Service to me. I had an Order from the Lords of the Ad-

miralty to require them to stay on shore, if I had occasion for them; but, as the Ship was gone before the Letter came to my hands, I have no occasion now to tell the Names of the Persons.

*(Mr. Goodere held up the Letter in his hand, but the Court did not receive it.)*

*Mr. Frisford.* Mr. Recorder, there have been several Appearances published in the News-papers, to the prejudice of Mr. Goodere; there has been a Pamphlet also published, which I have been in my hand, lastitled, *The Belief Forfeited*; but I hope the Gentlemen of the Jury will take no notice of it, nor be influenced by them against the Prisoner.

*Mr. Per.* I dare say they will have no Regard to any Book, but that on which they have been sworn: those who know him and their Characters, must certainly think so.

*(The Jury declared they had never seen any such Pamphlet, or Papers.)*

*Mr. Per.* Mr. Recorder, we must beg leave to ask Mr. Frisford's Opinion, as to Sir John's being a Lunatick, or not?

*Mr. Frisford.* Mr. Recorder, I am surprised to hear it said by some of Mr. Goodere's Witnesses, that Sir John Dingley Goodere was mad; I know him fourteen or fifteen Years, and conversed with him both in Person and by Letter; but never discovered that he was in the least disordered in his Senses, I always took him to be a Man of sound Understanding. On the Sunday, the Day before his Death, he expostified himself with a great deal of Good-sense and Affection at the sight of his Brother.

*Mr. Shephard.* Mr. Recorder, with humble Submission, I am instructed to offer it in Evidence, that the Place where the Ship lay is not within the City and County of Bristol.

*Mr. Per.* We have already proved it to be within the County of Bristol, nor is there the least reason to apprehend, that Mr. Recorder will extend the Rule of *Null Tenebris* of *emphatic Jurisdiction* to the extending of the County as often beyond its ancient and known Limits: He is too just to attempt it. On the other hand, we may depend he will not suffer the County-Limits to be stridged, but *fervere fas est*; and (as he hath hitherto done) discontinue all Encroachments on the Rights and Franchises of Bristol.

*Mr. Recorder.* It has been proved, and indeed it can't be denied, that at the Time the Fact in question was committed, the Ship lay in Kings-road; I think the Evidence which has been given of the Nature of Jurisdiction by the Magistrates of the City and County of the City in Kings-road, and of the Sheriff's Officers executing Process of all kinds there, amounts to a full Proof that Kings-road is within the Body of the County of the City of Bristol. It is the same sort of Proof by which the Bounds of every County in the Kingdom must be ascertained, the same Acts in the Place in question by the Officers of the County, which must be done in that County, and no other.

*Mr. Goodere.* All Kings-road is not in Bristol. Will your Lordship please to adjudge me to call Mr. H?? He is a Gentleman that has survey'd the Situation of the Place where the Ship lay, and will defend it.

*Mr. Per.* I am sorry to find Mr. Goodere driven to this Subterfuge in his Defence, I could wish he had one to make on the Merits; if he stands upon his Innocence, what need of all this Stuff about the Station of the Ship, or where on Earth can he hope to be tried before a Justice, or more impartial Judge than the present?

*Samuel Goodere.* Call Mr. H.?

*Mr. Recorder.* Mr. Goodere, if you can shew that any Part of Kings-road is, or ever was esteemed to be in any other County than the County of the City of Bristol, I will hear you; otherwise it will be to no purpose to debate the Situation of the Ship, since it is admitted that the lay in Kings-road. *(Addressing the Jury.)* Have you any thing to say?

*Mr. H.?* I beg pardon, your Lordship will pardon that I was a poet, poet's Sonnet, and I was drunk when I made the Confession, and I was frightened out of my Wits.

*Mr. Recorder.* You say you were drunk when you made the Confession; 'tis possible, that Night when you were first taken and brought before the Magistrates, you were in Liquor, but it seems your Confession was not taken 'till the next Day.

*Addressing the Jury.* My Lord, I was in Bristol; I did not keep a Wink the whole Night.

*Mr. Recorder.* Have you any Witnesses to call?

*Addressing the Jury.* No, please your Lordships, I am a Stranger here, I have no Witnesses to call.

*Mr. Per.* Mr. Recorder, I apprehend we are in a Case exceeding clear against both the Prisoners at the Bar; and, considering that Death and Life are in the Power of the Tongue, I am unwilling to reply, where Life is at stake; but, as Mr. Goodere seems to lay some Stress on the Circumstances of his not being actually in the Cabin, at the time his Brother was murdered there, I beg, Sir, you will indulge me an Observation or two as to that single Point. Not that I imagine the least Doubt in Law can remain with Mr. Recorder, but being in the Case of a Capital Prosecution, I would leave no Objections unanswered that have the least Dependence on the Law; and I agree, Sir, that in order to bring Mr. Goodere within the Compass of the Indictment, he must appear to have been present, as an Abettor, at the Perpetration of the Murder. The Law is extremely clear in this Particular; but then it is as clear, that if several Persons are engaged in a Design of murdering another, and one of the Party stands upon the watch, at the Room or House-door, whilst the rest actually commit the Murder, he is, in the Judgment of the Law, present at the Murder, and as much a Principal as it is the rest; and the Law is the same, though he stood at a considerable distance from the Place where the Murder was committed, as at the Gate or the Lane's End, for it is not necessary he should be in *Gestibus*, if near enough at hand to embolden his Accomplices in the Murder, through the Hopes of present Assistance, or Security from the Person upon the watch. And so it is expressly laid down, in Lord Chief-Justice *Holt's* History of the Pleas of the Crown, in the Chapter of *Pari-Traitor*; where he says, that if a Wife or Servant conspires with a Stranger to kill the Husband or Master, and be in the same House with the Stranger whilst he commits the Murder, the Wife or Servant is guilty of *Pari-Traitor*, though not in the same Room where the Murder was committed. The same Doctrine is laid down in Second *Martin's* Pl. Car. gra. (where as a living Author I cite, only for the sake



(see of the Authorities he has taken at great Pains in collecting.) And the Cafe of Lord Dacre is full in point: My Lord Dacre, with *Melody* and several others, went by Night into another's Park, unlawfully to kill Deer; they heard about the Park-Gate upon the watch, whilst the rest went a quarter of a Mile into the Park, where they met and killed the Keeper, Lord Dacre, though at so great Distance when the Keeper was killed, was *allegedly* a Principal in the Murder, and accordingly died for it. And applicable to this, was likewise the Cafe of *Berry*, (the Porter of *Samuel-Hughes*) who was concerned with *Grass*, *Hill* and others, in the Murder of *Lord-Bury-Grey*; some of them way-laid that worthy Magistrate, and having entered him into the Yard leading to *Samuel-Hughes*, *Grass*, *Hill* and others Beheaded him. *Berry* was one of their Gang, and whilst the others were committing the Murder, stood at a great Distance from them on the watch, upon the Steps leading to the upper Court of *Samuel-Hughes*: he was indicted with *Grass* and *Hill*, as being present and abetting the Murder, and upon this Evidence was convicted and executed. Gentlemen of the Jury, in the Cafe now before you, it is fully made out in Proof, that the Decedent was under an continuing armed Force, from the Infamy of his being forced to that of his Death; and that his Brother (the Prisoner *Mr. Gardner*) put and kept him under that Force. Then, Gentlemen, Mr. *Gardner's* displacing *Bushman* from the Cabin-door, and placing himself there in his stead, with the drawn Sword in his Hand; *Melody's* coming into, and being let out of the Cabin, whilst *Mr. Gardner* kept Guard at the Door of it; *Mr. Gardner* waving his Sword at *Melody*, and heading-in the Candle, the dying Quiveries of his Brother (which could not but reach his Ear, though not his Heart); and other black Ingressions in this dreadful Cafe, are an unconvincing Proof that *Mr. Gardner* was concerned with *Melody* and *Hill* in their Attempt to kill his Brother; and that he took his Stand at the Cabin-door, with no other Intent than to embolden and assist them in the Perpetration of this cruel Act, and keep off others from coming to his Brother's Relief, or from disturbing them in the fatal Business they were about. Under which Circumstance he is guilty in the same degree as *Melody*; and as the Eye of the Law looked upon to have been as much present at his Brother's Death (as an Abettor of the Murder), as if he had stood by the Bed-side and held the Sword over his Head, whilst *Melody* was strangling him. So that, Gentlemen, I apprehend we have made good the Indictment against both the Prisoners, by clear and convincing Evidence; and therefore doubt not but their Guilt will stand recorded to future Ages by the Talles of your Verdict.

*Mr. Shepherd*, My Recorder, will you please to indulge me a Word as to the Point of Law? *Mr. Vernon* mentions, in the Cafe of the Park that he hath taken notice of, the Lord Dacre and his Party came by Night unlawfully to kill Deer, and therefore the Law presumed they all came with an intent to oppose all that should hinder them in that Design; and so when one killed the Keeper, it must be presumed the Act of all, because present to that Intent. But whether the present Cafe is circumstantiated as that Cafe, ought to be considered. I do admit that *Mr. Gardner* was down in the Corridor at the time this Fact was done, and he was certainly obliged (as hath been observed) by the Law of the Nature to take care of his Brother. But if he had no other Intention of carrying him on board the Ship, than to secure and take care of him as a Person whom he looked upon as disordered in his Senses, and with a view of reducing him to Reason; then surely *Mr. Gardner's* Cafe is very different from the Lord Dacre's. And that *Mr. Gardner* did look upon his Brother to be so—

*Mr. Recorder*, *Mr. Shepherd*, you are going off from the Point of Law to Matters of Fact, I shall charge the Jury, that if they believe *Mr. Gardner* stood at the Cabin-door in order to prevent any Persons coming, who might have prevented the Murder, or to encourage those within the Cabin in the Business they were about, they must find him guilty on this Indictment; otherwise they must acquit him.

*My Lord*, He was not there with that Intention, he cannot be guilty; and in this Cafe no such Intention appears.

*Mr. Recorder*, His Intention is Matter of Fact, which must be left to the Jury on the whole Evidence.

#### Gentlemen of the Jury,

THE Prisoners at the Bar, *Matthew Mahony* and *Samuel Gardner*, stand indicted for the Murder of *Sir John Denley Gardner*. And the Indictment charges that *Melody* strangled him, and that the Prisoner *Gardner* was present, aiding and abetting him in the Fact. They are both charged as Principals in the Murder. For, Gentlemen, in the Eye of the Law, the Person who is present, aiding and abetting, is as much a Principal in the Murder, as the Person who actually commits the Fact. Whether the Prisoners, or either of them, be guilty in manner charged in the Indictment, you are to determine upon the Evidence you have heard.

The Evidence has been very long; but I will endeavour to lay the material Parts of it before you in such a light, as may best assist you in your present Enquiry.

On the 11th of all Doubt, the *Sir John Denley Gardner* was strangled on board the *Rody Man* of War in *King-road*, in the Night between the eighteenth and nineteenth of *January* last. And therefore must pass at that time, which may affect the Prisoners, or either of them, as they stand charged on this Indictment, will deliver your principal Attention. But as the Prosecutors here (very properly I think) gone pretty far back in their Evidence, in order to show by what means *Sir John* was put on board, it will be necessary for you to take that Part of the Evidence likewise into Consideration.

The first Witness in *Mr. Chamberlayne*, who tells you, that about three Weeks before the Murder happened, *Mr. Gardner* desired him to take his Gun Offices with *Mr. James Smith*, a Friend of *Sir John's*, as order to bring about a Reconciliation between *Sir John* and him.

*Mr. Smith* tells you, that *Mr. Chamberlayne* did apply to him for that Purpose; and afterwards brought *Mr. Gardner* to his House on the same Evening; And that *Mr. Gardner* then repeated the same Request *Mr. Chamberlayne* had before made on his Behalf. He says, he proposed the matter to *Sir John*, who with some Difficulty consented to give *Mr. Gardner* a Meeting, which was fixed for *Tuesday* the 12th of *January*, at *Mr. Smith's*

House in the *College-Grove*, of which *Mr. Gardner* had timely Notice. That on *Tuesday* the 12th, *Sir John* rode up to his Door, and having just alighted and acquainted him that he could not at that time fly; but that the next Time he came to Town, which would be the *Saturday* or *Sunday* following, he would meet his Brother, he mounted his Horse, and went off, attended by his Servant, both armed with Pistols. He says, that on the same Day he met with *Mr. Gardner*, and acquainted him, that *Sir John* would be again at his House on *Wednesday* or *Sunday*; and it was then agreed that *Mr. Gardner* should have notice when *Sir John* came. He says, that on *Sunday* Morning the 13th of *January*, *Sir John* sent him word, that he would be at his House that Day, at any Hour he should appoint; and accordingly Three in the Afternoon was appointed. He says, that the same Evening he gave *Mr. Gardner* Notice of the Appointment. That in the Afternoon *Sir John* and *Mr. Gardner* met at his House, where mutual Civilities passed between them. That *Sir John* soon took his Leave, the Witness and *Mr. Gardner* waiting on him to the Door, till late, that he perceived *Mr. Gardner* to stay longer, and said to him, I hope I have done great Things. To which *Mr. Gardner* replied with those Expressions, By God this will not do; and immediately followed *Sir John* down the Hill. He says, that standing at his Door he observed a Company of Sailors gathering about *Sir John*, and heard *Mr. Gardner* say to them, Is he ready, or is it ready? (he is not, I believe, positive, what were the Words). To which some of the Sailors answered, Yes, Sir. Whereupon the whole Company went halloo off, some towards the *Stairs*, others towards the *Lower Ground*, and *Mr. Gardner* followed them by the *Race*. *Mr. Smith* had no Suspicion at that time, that the Sailors were offering Violence to *Sir John*, and he made no further Enquiry into the matter, till a Soldier, who is likewise produced as a Witness, told him what happened on the Board.

The next Witness that produced is *Maurice Hilde*, who, it seems, keeps the *White-Hart* Alehouse at the Foot of the *College-Grove*; and says, Gentlemen, you will observe, that from the Front Windows of that House, one may have a View of *Mr. Smith's*. And he tells you, that on *Monday* the 12th of *January* last, the Prisoners at the Bar came to his House; that *Mr. Gardner* desired to see an upper Room, over the Parlour, fronting the Street; and having been at, said, he would come the next Morning and drink Coffee in that Room. Accordingly, the next Morning he came (early for that time of the Year) before the Windows were opened, or Fire lighted; his Dress is different from what he wore the Day before, that the Witness did not as first recollect him. But, it seems, he changed his Clothes after he came thither. He would be willing to drink his Coffee in the Parlour; but being desired to walk up stairs, he went into the Room he had pitched upon the Day before. Soon afterwards the Prisoner *Mahony*, with three other Persons, came in; and after them, five or six more. These People, Gentlemen, were not all together in one Room; but they were all entertained at *Mr. Gardner's* Expense. The Witness tells you, that *Mr. Gardner* ordered they should be entertained; and at going away paid the whole Reckoning. He says, that while the Company was at his House, *Mr. Gardner* above stairs, and others below, *Sir John Denley Gardner* rode by from *Mr. Smith's*, attended by his Servant; and that as they passed by, *Mr. Gardner* called out to the People below, Look well at him, but don't touch him. He says further, that on *Sunday* the 13th of *January*, *Mahony* came to his House in the Morning, and desired him that if he saw the Gentleman in the black Cap (by which Description it appears *Sir John* was meant) go upwards the Green, he would find a Porter to him at a Publick House in *Moorfields*. That in the Afternoon *Mahony* came again, with a great many other People, all appearing by their Dress to be Sailors. And that as the Decedent walked by the House, they all rushed out and went off. He goes, I think, no further in his Evidence; but he seems to be so much concerned for his Reckoning and his Taskard, to mind any thing that passed afterwards.

The next Evidence is *Thomas Williams*, who belongs to the *Ruby*. He says, that on *Sunday* the 13th, he brought up the Barge from *King-road*; and was ordered by *Mr. Gardner* to have two Hands aboard the Barge, and take eight of the Crew to the *White-Hart* Alehouse on the *College-Grove*, and there wait for him: far, said he, I have a Gentleman to go on board me. He accordingly went to the *White Hart* with his Men, and there found *Mahony* and four or five People belonging to the same Prisoner. He says, he had not been long there, before the Company rushed out of doors. Upon which he followed, and found they had laid violent hands on the Decedent, and were carrying him on board the Barge, giving out, that he had murdered a Person on board the Ship; and that they were carrying him thither in order, as they pretended, to bring him to Justice. He tells you, that the Prisoner *Mahony* was very active in this Outrage; and that the Prisoner *Gardner* was present, seeing and hearing all that passed. He likewise gives you an Account of the Conversation that passed between *Sir John* and the Prisoner *Gardner*, after they were in the Barge; and, among other Things tells you, that upon the Decedent's saying, You are carrying me on board to murder me, the Prisoner *Gardner* answered, No, I don't intend to do so, but I would have you make your Peace with God. This Witness speaks little or what said after they came on board the Ship; for, says he, I had been employed all Day, and went to bed early. But he tells you, that in the Night he heard a very unusual Noise on board; and that about Two in the Morning, he saw the Prisoner *Gardner* go down the Ladder leading to the Prisoner's Cabin.—You have heard, Gentlemen, from the Witness, where I shall mention presently, that the Murder was committed in this very Cabin.

The Prosecutors then called several Witnesses, *Samuel Trivet*, *Thomas Chamberlayne*, *Mr. Darcy*, and *William Dugrey*; who all speak to the manner of carrying *Sir John* from the *College-Grove* to the Place where the Barge lay.

The Witness *Elliott* agree in general, that he was treated with great Respect by the Company in whose Hands he was. But, as the Prisoner *Gardner* admits, that he did take his Brother on board, and, as *Mahony* endeavours to excuse the part he had in it, by alleging that he was under Command; I need not be very particular in repeating the Circumstances attending this part of the Affair. Only, Gentlemen, it may be proper for you to observe, that the Presence gave out to blind the People who







The next Witness, and the last that has been examined, touching what was done on Board the Ship, is *William Morgan*, the Centinel at the Gun-room. And he tells you, that after Two in the Morning, the Prisoner *Gardner* went down into the Cock-pit; that soon afterwards the Prisoner *Mahony* call'd by him; he says he would have sent him back, but *Mahony* gave him ill Language, and said on, and call'd on another Person to follow him. He says that *Dennis Broome* was ordered up to Deck, and that he saw *Mr. Gardner* standing at the Prisoner's Cabin-door with a Sword drawn in his hand; and remembers, that when he offered to come near the Cabin, *Mr. Gardner* ordered him to keep back: This was at the Time the Noise and Querry was in the Cabin. He says further, he saw *Mahony* go into the Cabin before the Noise was heard there; and that, about Three in the Morning, he saw both the Prisoners at the Burge up the Ladder from the Cock-pit to the Deck together.

The Prosecutors then examined two Witnesses touching the Gold Watch which has been produced. One of them, *Samuel Calvert*, says, that the Prisoner *Mahony*, the Day he was apprehended, deliver'd the Watch to him, desiring he would put it by for him; that he, upon hearing that *Mahony* was taken up for the Murder, in a Surprise, threw it into the Vault. The other Witness tells you, that he, by Order of the Magistrates, open'd the Vault, and found the Watch there. This Watch the Prosecutors would fix upon the Prisoner *Gardner*, and to that end, it was shewn to *Thomas Curre*, who was examin'd before to other Points. And he says, he cannot be positive, but believes it to be *Mr. Gardner's* Watch, having often seen it, or such a one, hanging up in his Cabin. The Prosecutors then produced a Handkerchief, which was taken out of *Mahony's* Pocket the Night he was apprehended; it appears to be a little blood, but I don't for what Use they make of that Circumstance.

The next Person of Evidence the Prosecutors were to produce was *Mahony's* Examination and Confession, which has been read to you. This, Gentlemen, is very proper Evidence, and ought to have its Weight with you, in far as it concerns *Mahony* himself, but with regard to the other Prisoner *Gardner*, you are to lay no manner of Stress upon it, as it is no Evidence against him.

The Prosecutors then proceeded to shew, that *King-road*, where the *Ruby* lay at the Time the Fact was committed, is within the County of *Bristol*. I think indeed that some Evidence of that Kind was proper to be given, for your Satisfaction, and to that End they have called Sir *John and Mr. Lush*, two eminent Officers well known to you all. And the first is, in proof, that *King-road* has always been esteemed to be within the County of *Bristol*. And he says to you further, and says, that they have constantly, on Occasions required, executed Process of all Kinds in *King-road*, Warrants from the Mayor and Aldermen, Process from the Mayor's and Sheriff's Court, and Warrants grounded on Writs from above, directed to the Sheriffs of *Bristol*. And, Gentlemen, I must say, that the another Sort of Evidence might have been given, touching the Bounds of this County by Water, I know no Evidence is proper to prove the Bounds of any County, as the constant Exercise of Jurisdiction in the Place in Question, where Sort of Evidence can be had.

I think, I have repeated to you the several Parts of the Evidence which has been given against the Prisoners at the Bar; and you will now consider what they have offered by Way of Defence to this Charge.

As for *Mahony*, I do not hear him say any Thing by Way of proper Defence, nor has he called a single Witness. He hopes, indeed, that it will be taken by Way of Excuse, that he was a poor servile Servant, and acted by Compulsion. But, Gentlemen, if you believe the Evidence which has been given against him, on Command of any Superior whatsoever (applying that to have been an Ingratitude in his Case) will excuse him.

*Mr. Gardner* says, that his Brother was a Larner, and he being his only Brother, thought it his Duty to take Care of him in that Condition; that in order thereto he had endeavour'd to get a Lodging in this City, where he was to be confin'd under the Care of the Prisoner *Mahony*, who was to have stay'd a Month for his Attendance on him. That not being able to get a Lodging for the Purpose in the City, he took him on Board the *Ruby*, in order to have him taken proper Care of there. He denies that he ever consented to the Murder, or had any Knowledge of it; and insists on the great Improbability there is that he should be concern'd in the Murder, since, he says, he knew that *Sir John* had cut off the Estate of the Family, and had actually made his Will, by which he had devised the Estate to another Branch of the Family. So that, says he, *Sir John* dying while thus Will'd, I have no Chance by the Will; I believe, as long as he lived, my Chance as Heir at Law continued, for he might have chang'd his Mind, and alter'd or destroy'd his Will.

The first Witness he call'd was *Mrs. Groom*, who, I suppose, lets Lodgings in the City, and she says, that *Mr. Gardner* never made a Secret of his Design, of confining his Brother as a Lunatick; and that about three Weeks before this Matter happen'd, he used to her for a Garret in her House for that Purpose, but she remembers no Difficulty the Prisoner had with her about *Mahony*.

*Mr. Gardner* then call'd two Witnesses in Relation to something which was spoken against him, (but not directly prov'd by any of the Witnesses call'd by the Prosecutors), touching his leaving *Mahony* and his Wife away in the Yawl the Morning the Fact was committed.

These were *Mr. May* and *Mr. Day*.

*Mr. May* says, that on the Sunday in the Afternoon, after *Sir John* was brought aboard, he was order'd by *Mr. Gardner* to go up in the Yawl early next Morning, to fetch Letters from the Post-Office, and he tells you that as he was setting out on Monday Morning, he was inform'd by some of the Ship's Company, that *Mahony* and *Phoebe* were to go with him. Upon which he went to the Captain to have his Orders; for, said he, I never take any Body about without Leave. And he tells you, that *Mr. Gardner* did order him to take *Phoebe* and *Mahony* up in the Yawl. He says, that he had no Orders to land them at any particular Place; and that they were put ashore at the Gold, the usual Place of Landing, about Six in the Morning.

*Mr. Day* tells you, that *Mahony* had chang'd one *Mercin* in his Custody, in an *Adieu* for Wages; that the *Wednesday* or *Thursday* before this Matter happen'd, he was sent on *Mr. Gardner* from *Mercin*, in order to accommodate *Mercin* with *Mahony*. And that *Mr. Gardner* appointed to meet *Mercin* on that After the *Mahony* following. He cannot say, that *Mahony* was to meet on that Day (who) reduced his fee he did all a Gun-

man's fee), and knows not of any *Bulfinch* who had that Day in *Bristol*.

*Mr. Gardner* next called these Witnesses to the Point of *Sir John's* Lunacy. The two first have lived with him as Servants, and they give you divers Instances of an extravagant unaccountable Behaviour in him; from which they conclude that he must have been a Madman. The other Witness says, that he knew *Sir John* for some Years, and in general says, that from his Actions he took him to be mad.

He then called several Witnesses, Gentlemen of Worth, who have known him many Years; and they all agree in giving him a very good Character, as to his former Life and Conversation: And particularly say, that they always took him to be a good-natur'd, well-belov'd Man, and one that merited the Love and Esteem of his Neighbours. One of these Witnesses, *Mr. Fenwick*, says, that he was constant at Church on Sunday twice a Day, generally attended the Church-Services, and seldom miss'd attending at the Sacrament.

Another of these Witnesses, *Mr. Ashford*, having given the Prisoner a good Character, was ask'd touching *Sir John*, particularly with Regard to his Sanny; and he seems surpris'd to hear *Sir John* represent'd as a Mad-man, and tells you, that he always took him to be a Man of good Understanding; and goes so far as to say, that he took him to be the Man of the best Sense in the Family. He was ask'd, touching the Prisoner's having been inform'd of the Contents of his Brother's Will, and he tells you, that the Prisoner was inform'd of the Purport of the Will, but adds, that the Prisoner declar'd that he did not value the Will: And says, that there had been a long Misunderstanding between the Brothers.

*Mr. Gardner* call'd a Witness (*Mr. Fawcett*) to prove that he was inform'd of the Contents of *Sir John's* Will. And he tells you, that about half a Year, or three Quarters of a Year ago, he did inform *Mr. Gardner*, that *Sir John* had made his Will, and had given his Estate to the Prisoner who, it seems, are Nephews to *Sir John* and the Prisoner. But he tells you, that the Prisoner then said, he thought *Sir John* had no Power to make a Will. He says, that in dispute about the Will, he spoke it to the Prisoner as his Opinion, that if *Mahony* could be reconciled between *Sir John* and him, that Will would stand long. For, Gentlemen, he likewise says, that there has been a long Misunderstanding between the Brothers. This Witness was likewise ask'd, touching *Sir John's* Lunacy, and he seems surpris'd to hear that he truly is call'd in Question; and gives him an advantageous Character in the several Points.

This, Gentlemen, is the Substance of the Evidence that has been given on the one Side and the other. And though the Evidence has been very long, and, as you observe, chiefly pointed at the Prisoner *Gardner*, yet with Regard to your present Enquiry, the Matter after all will lie in a narrow compass. You observe, Gentlemen, the Indictment charges that he was present, aiding and abetting the Murder; and therefore however influential you may suppose him to have been in procuring the Death of *Sir John*, by carrying him on Board, and treating him there in the manner you have heard; yet, if you have no Evidence to induce you to believe that he was present, aiding and abetting at the Murder, he will not be guilty on this Indictment. But, *Gentlemen*, you must not be deceiv'd by the name of Words. It is not necessary, in order to render a Person guilty as a Principal in Murder or other Felony, that he should be in the large Room, or on the very Spot where the Fact is committed, or even in Sight or Hearing of it. If he be engag'd in the Design, and puts himself at the Time of Execution in a proper Station to give Assistance, if he aid, or to prevent a Surprise whereby the Person actually committing the Fact are encouraged in the Perpetration of it, he is in the Eye of the Law present, aiding and abetting, and equally a Principal in the Fact with him who actually commit it. An Instance at two ways make this Rule better understood. If several Persons agree to commit a Murder on the Highway, or in the open Field, and one Party of them actually do the Fact committed; the others differ themselves to their several stations, and stand upon the Watch to prevent a Surprise; they are all equally guilty, and in the Eye of the Law present at the Fact. So, if a Number of People agree to commit a Murder, and to that End break into a House, and then disperse themselves into several Rooms; or, if any of the Company stand without, and keep the Door while the Murder is committed within, they are all equally guilty, and in the Eye of the Law present. Nay, tho' the original intention might be barely to commit a Robbery, yet, if the Persecution of that Design a Murder is committed, the whole Company, those who stood upon the Watch, as well as those who committed the Fact, are all equally guilty, and Principals in the Murder. And therefore, Gentlemen, in order to the Evidence which has been given, you believe that the Prisoner *Gardner* did stand at the Door of the Prisoner's Cabin while the Murder was committed, in order to encourage those within in the Perpetration of the Fact, or to prevent any Assistance which might have come, you must find him guilty. And, Gentlemen, I must observe to you, that it is prov'd by four Witnesses, that he was in the Cock-pit while the Cry of Murder was heard in the Cabin. Two of these Witnesses are positive that he stood at the Cabin-Door at that time with a drawn Sword in his Hand; and that while he was there posted, he order'd others to keep back. And one of the four Witnesses is likewise positive that soon after the Cry of Murder was heard, *Mr. Gardner* boarded the *Centile* into the Cabin.

*Mr. Gardner* indeed has call'd several Witnesses, who have given him an advantageous Character; but, Gentlemen, I think a my Duty to tell you, that this Character ought to have its Weight when Matters are in themselves doubtful, or where the Charge is supported by Witnesses of doubtful Credit; yet in clear Cases, and when the Credit of the Witnesses is not impeach'd, I think Character alone ought to weigh very little with you. And upon the whole, if you believe the Witnesses for the King, you must find him guilty, if not, you must acquit him.

As to *Mahony*, I think you can have no Difficulty if you believe the Evidence of *John* and his Wife, and lay any Stress on his own Confession, and indeed he never makes endeavour to excuse his own Fact. (Then the Jury is to be, in favour of their Verdict, and after a short Space return'd again.)

Clerk of Arraignment. Gentlemen, advise to your Names. *Crispian* Broome.

*Crispian Broome*. Here. [And so of the rest.]

Cl of Arr. Gentlemen, are you all agreed of your Verdict? Jury. Yes.

Cl of Arr. Who shall lay for you? Jury. The Fore-man. Clerk



*Cl. of Arr.* *Matthew Mobley* hold up the Hand. You of the Jury, I lay upon the Prisoner: How say you, in *Matthew Mobley* guilty of the Felony and Murder, whom he himself indicted, or not guilty?—*Jy.* Guilty.

*Cl. of Arr.* What Goods or Chattels, Lands or Tenements had he at the Time of the said Felony and Murder committed, or at any Time since, to your Knowledge?—*Jury.* None.

*G. of Arr.* *Samuel Goodere* hold up the Hand. You of the Jury, look upon the Prisoner. How say you, in *Samuel Goodere* guilty of the Felony and Murder, whom he himself indicted, or not guilty?—*Jury.* Guilty.

*Cl. of Arr.* What Goods or Chattels, &c. (as before)?—*Jy.* None.

### The Trial of Charles White, for the Murder of Sir John Dineley Goodere.

ON Friday the 25th of March 1741, *Charles White* was brought to the Bar of the Court, to be arraigned for the Murder of Sir John Dineley Goodere, upon a Indictment found by the Grand Jury for the City and County of Middlesex on the Day preceding, and the Court proceeded thus: *Clare of the Assizes* *Charles White*, hold up your Hand. [Said he hold.] You stand indicted by the Name of *Charles White*, late of the Parish of St. Andrew, in the City of Bristol and County of the same City, Labourer, and that you and one *Matthew Mobley*, late of the same Parish, City and County, Labourer, not having the Fear of God, &c. on the nineteenth day of January, in the fourth Year, &c. us and upon one Sir John Dineley Goodere, in the Peace of God, &c. then and there being, feloniously, voluntarily, and of your Malice aforethought, did make an Assault, and that the said *Matthew Mobley*, a certain Cord of the Value, &c. about the Neck of the said Sir John then and there feloniously, voluntarily, and of his Malice aforethought, did put and suffer: And that the said *Matthew Mobley* with the Cord aforesaid, by him so about the Neck of the said Sir John put and suffered, and then, him the said Sir John feloniously, &c. did choke and strangle, of which said choking and strangling of him the said Sir John by the said *Matthew Mobley*, in Manner and Form aforesaid done and perpetrated, he the said Sir John then and there instantly died. And that you the said *Charles White*, then and there feloniously, &c. was present, aiding, abetting, comforting, and maintaining the said *Matthew Mobley* in Manner and Form aforesaid, feloniously, &c. the said Sir John to kill and murder, and to that you the said *Charles White*, in Manner and Form aforesaid, the said Sir John then and there feloniously, &c. did kill and murder, against the Peace, &c.

How say you then *Charles White*, art thou guilty of the Felony and Murder, whom thou yourself indicted, or not guilty?

*Charles White.* Not guilty.

*Cl. of Arr.* Calent, how wilt thou be tried?

*Charles White.* By God and my Country.

*Cl. of Arr.* God send thee a good Indictment.

The Court proceeded in this manner as upon the Indictment against Mr. Goodere and Mobley, and the Names of the Jury sworn, were as follow.

<i>John Nash.</i>	<i>William Jones.</i>	<i>John White.</i>
<i>Joseph Wilson.</i>	<i>Robert Moody.</i>	<i>Cornelius Sandford.</i>
<i>Samuel Case.</i>	<i>William Williams.</i>	<i>John Taylor.</i>
<i>William Aversham.</i>	<i>William Arnold.</i>	<i>Thomas Bird.</i>

Then Proclamations for Information was made, and the Jury charged with the Prisoner.

*Mr. Foreman.* May it please you, Mr. Recorder, and you Gentlemen of the Jury, I am Counsel for the King against the Prisoner at the Bar, who stands indicted for the Murder of Sir John Dineley Goodere, and the Indictment charges that one *Matthew Mobley* (who has already undergone the Justice of his Country) strangled the Deceased, and that the Prisoner at the Bar was present, aiding and abetting him in the Perpetration of that horrid Fact, and which (if true) will be the same in consideration of Law, as if the Prisoner had with his own Hands strangled the Deceased, and actually drawn the fatal Cord which put a period to his Life. Gentlemen, it is with an aching Heart I discharge this melancholy Task against the Prisoner, but criminal Justice must be administered as well as clemency, and the great duty of the Innocent (as in the Prisoner's Case) is to stand by the Prisoner's map. If he should, that he be not found at the Bar for his Life and Death, and acquitted by Counsel in Matter of Fact, I shall carefully confine myself to the Letter of my Instructions, without any Aggravation of Facts or Circumstances, and endeavour to discharge my Duty on this melancholy Occasion, as that he may have nothing to fear but from Guilt, or to hope but from Innocence. And, Gentlemen, as I am instructed, Captain *Samuel Goodere*, late Commander of the *Royal Man of War*, and Brother of the late unfortunate Sir John Dineley Goodere, having on Sunday the eighteenth of January last, with the Assistance of Mobley and other Ruffians, forcibly seized upon Sir John, and hurried him on board the *Ruby* (which then lay anchored in King's-road, within the Body of our County), with a design of murdering Sir John, the Prisoner (a private Mariner belonging to the *Ruby*) was placed upon by the Captain as a Person fit to be concerned with Mobley in the Execution of that base and barbarous Design. And accordingly, on Monday the nineteenth about One in the Morning, the Prisoner was called upon by Mobley to attend the Captain in his Cabin, which he did; and the Captain after playing the Prisoner pretty plentifully with Rum, persuaded him to the murdering of his Brother, in conjunction with Mobley, and no sooner said but done, Gentlemen: for this infamous Wretch the Prisoner, influenced by the strong Delusion of Wickederess, and Temptation of mistaken Gain; and not content with his base Wages, nor considering that the Wages of Sin are Death, gave at once into the malicious Proposal for the sake of a pound. In a word, Gentlemen, he readily followed Mobley into the Prisoner's Cabin, where Sir John lay confined; and as that unhappy Gentleman had from the time of his being taken was treated as a Malefactor, for he exceeded him as such, for Mobley used him by the Throat, and even falling about his Neck a Rope, which they had brought with them for the purpose, strangled him in the Presence and with the Assistance of the Prisoner, and asked without his Assistance, Sir John being through and of an undisciplined Spirit, we could probably have been able to have defended himself against the Attack of Mobley. Gentlemen, no more had they robbed Sir John of his Life, but they fell to robbing him of his Watch and Money, that is, to divide the Spoil between them, and then betwixt in the Morning the Prisoner was put to his bed in the mean time Mobley made off from the Ship, and took refuge in this City, a very unfit Sanctuary for Ruffians and Murderers, who should see good Order and Government of the Place, and the constant Care of its worthy Magistrates in the due Execution of the Laws that Sir John putted, and wily, I don't not, overtake him. He was apprehended, and made an early Confession of his Guilt, and comes now to answer for his Delinquency.

*Cl. of Arr.* Hearken to your Verdict, as the Court hath recorded it. You say that *Matthew Mobley* is guilty of the Felony and Murder, whom he himself indicted. You say that *Samuel Goodere* is guilty of the Felony and Murder, whom he himself indicted; and that they are either of them, had any Goods or Chattels, Lands or Tenements, at the Time of the said Felony and Murder committed, or at any Time since, to your Knowledge?—and do you say all?

*Cl. of Arr.* Keep your Place. *Matthew Mobley* and *Samuel Goodere* are the Prisoners from the Bar, and look to them; they stand convicted of wilful Murder. [Then the Court adjourned to the next Place the next following Night &c.]

*Edward Jones* (sits.)  
*Mr. Foreman.* *Edward Jones*, tell Mr. Recorder and the Jury what you know concerning the Death of Sir John Dineley Goodere.  
*Edward Jones.* On the 18th of January last, at night, I was in my own Wife in the Ship-room, next the Prisoner's Cabin down in the Cockpit in the *Ruby* Man of War when lying at King's-road, and Sir John Dineley was then confined in the Prisoner's Cabin. I heard the Prisoner at the Bar as his Confessor under his Affidavit, he said, that he knew he was to be murdered there, and he prayed that it might come to light by one means or another. But I took no notice of him, because I thought him a crazy Man, as I heard the Captain say he was. After that, I fell asleep, and I believe, about two or three of the clock my Wife waked me, and said to me, Don't you hear the Noise that is made by the Gentlemen? I believe they are killing him. I then heard Sir John rick, and cry out, Here I come, Gentlemen, take it, and don't murder me, must I feel must I die! Oh my Life! and gave several Kicks with his Throat like a young Man, and then he was dead. I would have got out of bed, but my Wife persuaded me not, for fear I should be killed too. It was dark, but a Light was landed in to the Prisoner's Cabin, and then I got up upon my Knees, and I could see a Light glimmering through the Crack of the Boards; I saw Mobley with a Candle in his Hand, Sir John was lying on his Side. The Prisoner *Charles White* was there, and he pulled Sir John to turn him about, and White said he could not get the Watch out of his Pocket; and he tumbled him up to come at the Money, and undressed his Breaches. I saw him get hold of the Watch-Chain, and White gave Mobley the Watch, and White put his Hand in one of the Gentlemen's Pockets, and cursed that there was nothing but Silver; he put his Hand in another Pocket, and there he found the Gold, he offered it to Mobley, but Mobley damned him, and bid him keep it till by and by. White pulled out a Piece of Paper from one of Sir John's Pockets, and was going to read it, but Mobley said, Damn ye, don't say too much now.

*Mr. Foreman.* Was Sir John dead in appearance when you saw them rifling his Pockets?

*Edward Jones.* As they were turning him about, one of his Legs was exposed, which made me think he was dead, and that they had killed him in the Dark. The next Morning I saw Sir John dead, lying in the Prisoner's Cabin, and I believe he was strangled.

*Mr. Recorder.* Gentlemen, will you ask the Witness any Questions?  
*Charles White.* Please your Lordship, I desire you will ask Mr. Jones, whether Sir John was living or dead when he was in the Cabin first?

*Mr. Recorder.* Mr. Jones, the Prisoner asks you whether Sir John was living or dead when you first saw him in the Cabin?

*Edward Jones.* Sir John was dead when White turned him about, for they killed him in the Dark. I heard two Voices.

*Charles White.* Whether *Edward Jones* saw any body strangling Sir John besides Mobley?

*Mr. Recorder.* The Witness does not say that he saw any body strangling Sir John, that he saw was done in the Dark; but he says, he heard two Voices in Sir John's Cabin, and as soon as the Light was brought in, he saw no rifling Sir John's Pockets.

*Mr. Foreman.* Call *Margaret Jones*.

*Mr. Foreman.* Mrs. Jones, will you give Mr. Recorder and the Jury an Account of what you know in relation to the Death of Sir John Dineley Goodere?

*Margaret Jones.* Yes, Sir. On the 18th of January last, at Night, I lay on board the *Ruby* Man of War with my Husband, and in the Prisoner's Cabin, next to where we were in the *Ruby* was under Confinement; the Captain said to me was Madman, and that he brought him there to save him from a Gall. About an O'clock Mobley was sent there with Sir John, Sir John desired him to go, but Mobley said he had Orders so they there to take care of him. About 12 o'clock in the Night I went to sleep; about two o'clock I awaked, and heard the Gentlemen talk to Mobley, and they talked together a good while. I heard somebody say to the Gentlemen, You must be still, and not speak a Word for your Life; and then I heard a great strangling, who it was, I don't know. The Gentlemen cried out Murther! Help, for God's Sake, and made several Kicks in his Throat, as though somebody was strangling him. I shook my Husband, and asked him. I heard two People in the Cabin whispering; the Gentlemen cried out, Murther again, Help for God's Sake! He said, Here's twenty Guineas in my Pockets, take it, must I die! Oh my Life! And somebody in throat said offered to go into the Cabin; but one of them within said, Keep out, you Negro, and then a great Noise was made, as if the Cabin would have been beat down, and then a Candle was brought in. I got up and looked through a Crevice. I saw Mr. Jones, he was in White, pulled the Gentlemen by the Arm, Mobley had the Candle in his Hand. I observed the other put his Hand in the Gentlemen's Pockets; one of them said, Damn ye, pull out his Watch; I saw the Person take hold of the Watch string, and pulled it out, and laid to the other, Here they take it, and then strangled another Pocket, and said, Here's nothing but Silver. But then he searched another Pocket, and said, Here it is, and pulled



pulled out a Purlo. And from after that I heard the Door unlatched, and then I heard *Melroy* say, Where shall I run? And another said, Follow me, Boy, and they went upon Deck through the Hatch-hold.

*Mr. Forman.* Did you know the Voice of either of the two Persons when you heard speaking to one another?

*Margaret Jones.* Yes, I knew *Charles White* to be one of the Men by his Voice. I knew his Voice when he said to *Melroy*, Follow me, Boy. I am certain the Prisoner at the Bar was in the Cabin; I observed his Ball, but could not look earnestly at him, being very much shocked and surprised; but my Mother told me it was *Charles White*.

*Mr. Recorder.* *White*, will you ask this Witness any Questions?

*Charles White.* Please you, my Lord, to ask her, whether she can say that she heard my Voice in the Cabin?

*Mr. Recorder.* Mrs. Jones, the Prisoner asks you, if you heard his Voice in the Cabin?

*Margaret Jones.* I could not know his Voice in the Cabin, for he spoke low, and when a Person whispers, the Voice is not so distinguishable: But as soon as he spoke aloud, I knew it to be his Voice.

*Mr. Recorder.* Did you find him in the Cabin, Mrs. Jones?

*Margaret Jones.* My Lord, I did not see his Face, but by his Voice when he went out, I knew him to be the same Man.

*Charles White.* Please you, my Lord, to ask her, whether she ever heard me say, Follow me, Boy, before?

*Mr. Recorder.* Mrs. Jones, you hear the Question, give an Answer to it.

*Margaret Jones.* I never heard him say before; but I knew his Voice perfectly well, having been acquainted with him for two Years.

*Mr. Forman.* We must now defer that the Prisoner's Examination may be read. Crier, swear Mr. James Britton, (second Clerk to the Town-Clerk).

(*Mr. Britton swears.*)

*Mr. Forman.* Mr. Britton, What Paper is that?

*Mr. Britton.* The Examination of the Prisoner at the Bar taken before Mr. Mayor.

*Mr. Forman.* Did you see the Prisoner sign it in Mr. Mayor's Presence?

*Mr. Britton.* Yes, I did.

*Mr. Forman.* Did you see Mr. Mayor sign it?—*Mr. Britton.* Yes.

*Mr. Forman.* Is that his Hand?—*Mr. Britton.* Yes.

*Mr. Recorder.* *Confess for the Prisoner.* It is opened by Mr. Forman, that this Examination contains the Prisoner's Confession of the Fact. I would tell Mr. Britton, Was the Confession voluntarily made or not? but if it was not voluntary, it is only a matter of fact.

*Mr. Recorder.* That is an improper Question, unless the Prisoner had insisted, and made it Part of his Case, that his Confession was extorted by Threats, or drawn from him by Promises; in that Case, indeed, it would have been proper for us to enquire by what Means the Confession was procured: But as the Prisoner alleges nothing of that Kind, I will not suffer a Question to be asked the Clerk, which carries in it a Reflection on the Magistrate before whom the Examination was taken. Let it be read.—*Cl. of the Recds.*

*Clerk and Crier of the Court.* To wit,

20 January, 1740.

*The Examination of Charles White, a Sailor belonging to the Ruby Men of War, who lay in this Port, here in Drogheda in Ireland, aged 24 at forty-five Years.*

THE Examination voluntarily, cheerfully, and faith, that he hath been a Sailor on board the said Ship for about seventeen Months last past: That about one of the Clock in the Night of Sunday last, the eleventh Instant, he was asleep in his Hammock on board the said Ship, and was called out by one Matthew Melroy, another Sailor on board the said Ship (and now in Custody), who told him, that the Captain (meaning Captain Samuel Goslow, Commander of the said Ship) wanted to speak to him in his Cabin; and accordingly he went to his Cabin, and came to him, the Captain asked him to sit down, and then he sat down on a Wainscot, at which time, after that four or five more, and some others, that he could not say a *Spaniard*. And this Examination answered him, That he never did. Upon which the Captain told him, he had given a Job to him to do, if he would undertake it: And this Examination said, how what Job it was? And the Captain told him, it was to make away with his Brother, a whole Name (as this Examination is informed) was Sir John David Goslow, Bart. who was in the Purser's Cabin on board the said Ship. And the said Matthew Melroy told this Examination, that he must go with him to help do it. Whereupon the said Captain went out of the Cabin first, Melroy followed him, and this Examination went next, and when he came to the Purser's Cabin Door, where Sir John David Goslow, the Captain was, standing, Goslow laid his Hand on a Cabinet in his Hand, and Melroy had entered the Cabin, and this Examination entered likewise, where Melroy was talking with the said Sir John, and had a Piece of Rope, called three-quarter of an Inch Rope, in his Hand, about six Foot in Length, and Sir John was lying on the Bed; and particularly Melroy asked Sir John how his Head was, and what he had got about it? And at last told him, it did not signify talking about it any longer, and then kill out him on the Bed, took hold of his Throat with his Hand (his Stock being on) and so strangled him with his Stock, and afterwards put the said Rope about his Neck, (which was prepared for the Purser), and a Knife in it, before it was brought out of the Captain's Cabin, and then Melroy bound the Rope tight about his Neck; and upon this Examination's telling him what he did that for, He said, for he should not be dead enough. And this Examination took a Knife out of his Pocket, and cut off his Neck, and threw it overboard. During all which Time the Captain stood Control at the Door as before, and as the Examination cut off his Neck, the Captain would not allow to Melroy, who gave it to him, and Melroy took the Watch and Man's key out of Sir John's Pocket; and then the Captain said, if I then have you dead? Mr. Melroy (as this Examination apprehended) would not let the said Sir John, And then came in himself, and this Examination went up to him in the Hall, and came upon Deck, where he waited for about a Quarter of an Hour, and the Captain and Melroy went into the Captain's Cabin together, and then this Examination returned into the Store-room, and Melroy called this Examination into the Cabin, and the Captain had undressed himself in order to go to Bed, and in a few Minutes gave him five Guinea, and this Examination had removed the said Captain a Silver and three Shilling Piece of Gold before the said Sir John was murdered. And further this Examination says, That

Melroy showed this Captain the Watch he had taken out of Sir John's Pocket, and the Captain gave Melroy his own Watch, and kept Sir John's himself; and Melroy likewise showed the Captain the Money he had taken out of Sir John's Pocket, who bid him keep it; and Melroy gave it to this Examination, who put it in his Pocket, and he and Melroy shared the Money on the Fore-castle, and this Examination had two Pieces to one, in consideration that Melroy had the Watch; and this Examination believes they shared about thirty Pounds between them. And further this Examination saith, That the said Captain told him, and Melroy, that they might go any where for three Weeks, and he would find them their Tickets. And lastly, this Examination saith, That between four and five of the Clock the same Morning, the Man of War's Yawl was going to the City, and he and Melroy landed at the Gold-horn. Charles White.

*Mr. Recorder.* Well, Prisoner, what have you to offer in your Defence?

*Charles White.* Please you, my Lord, I was in my Hammock between the Hours of Twelve and One, and this Melroy came to me and said, Charles White, Charles White! I said, What do you want? He said, Turn out. I asked him what he wanted of me now? He said again, Turn out, turn out. And with that I turned out, and went upon Deck to make Water, and whilst I was doing it, he told me that he wanted me to go with him. I asked him where he was going to bring me? But he led me into the Cabin where the Captain was. When I came in, the Captain bid me sit down. I begged him to excuse me from taking to great a Freedom as that in his Company. But at last I sat down, and I drank a Glass of Rum. Then the Captain asked me, whether I had ever killed a *Spaniard*? I told him, No, I never was engaged with one to kill him. Drink about a Bottle, said the Captain. With that he said, Come along with me. I asked him where he was going? I went with him, the Captain first, and Melroy went after him; and they went below, and to what I learned, being quite in Liqueur with drinking so much Rum. Said the Captain to me, when we came down, Turn here till I call you. Soon after Melroy came to me, and told me the Captain wanted you. Then I went into the Cabin, and sat down as at, and Melroy and the Captain were talking together; but what they did I know not, for I never had a Hand near the Gentlemen.

*Mr. Recorder.* You say you were in the Purser's Cabin, and do you not know what happened there?—*Charles White.* I cannot tell, Sir, what passed.

*Mr. Recorder.* If this Defence be true, how came you to be so unjust to yourself, and make the Confession which has been read?

*Charles White.* Please your Lordship, I was in Liqueur, and did not know what passed between them, for I had not my Senses about me.

*Mr. Recorder.* Why, 'tis charged upon you by the Cooper, that you examined Sir John's Pocket, and took out his Watch and Money, and a Piece of Paper which Melroy persuaded you to throw away, as of no Consequence, or else to put it into your Pocket, and send it as another Time.

*Charles White.* Please you, my Lord, I know nothing of it, I have several Witnesses to my Character.

*Mr. Recorder.* Call your Witnesses.

(*Michael Smith sworn.*)

*Mr. Recorder.* How long have you known the Prisoner?

*Smith.* From a Child, Sir, we went to School together for eight Years.

*Mr. Recorder.* What do you know of him?

*Smith.* Sir, I never heard to the contrary but that he was an honest Man, and bore a good Character.

(*Thomas Court sworn.*)

*Court.* I never knew any Harm of the Prisoner till this unhappy Affair, but I have been informed, that since he hath been under Confinement, he hath told several People who have gone so far him, that if he can get clear of this, he will kill my Man.

(*Richard Tins sworn.*)

*Edward Jones.* I have known the Prisoner for three Years, but never knew any Harm by him; I was with him in the *Mynd-India*, in the King's Man of War, but till this Misfortune happened, I never knew any Harm by him.

*Mr. Recorder.* Are you sure then, that you saw him in the Cabin, taking the Deceased's Pocket?

(*William Maynard sworn.*)

*Maynard.* Please you, my Lord, I knew the Prisoner at the Bar ever since he was an Infant; I went to School with him, and never knew any Harm that he did before; I have often both out and drunk with him, and when he is sober, he is as good and civil a Man as need be.

(*David Fisher, Carpenter of the Ship, sworn.*)

*Fisher.* I have been about fifteen or sixteen Months with him, and he always behaved himself well on board, and I never knew any Harm of him before; but his Voice is known from all the Men in the Ship.

*Mr. Recorder.* To what Purpose do you say, that his Voice is known from all the Men in the Ship?

*Fisher.* Because they talk about his Voice oftentimes.

*Mr. Forman.* If I apprehend him right, Sir, he speaks this in Confirmation of Mrs. Jones's Evidence, who swears she knew the Prisoner's Voice. Gentlemen, I was in Hopes the Prisoner would have told to his former Confession, instead of endeavouring to retract it, and have given Glory and aid by a public Penitence and Scarrow for the misdoings of his Crime, instead of putting on a Show of Innocence against Prosecution of his Guilt.—Delancey, I apprehend, he has made some, he has called indeed some Witnesses to speak to his Character, and Character, it will be admitted, is of Weight, by way of balancing the Proof, where the Fact is doubtful and uncertain; but when the Evidence is strong and pregnant, and that stands the Prisoner in the Face, Character weighs not a single Grain in the Scale of Justice. How far the Prisoner's Character and early Confession of the Fact, with force Impediments in his Case, may be of service to him in another Place, is not the present Consideration; he stands now at the Bar for your Justice, not your Pity, and is fully apprized in Proof, that he was in Accomplish with Melroy in this heinous Murder, he is in the Indulgence: Is that Life ought to go for Life by the Laws of God and Man, did I doubt not in the least, but that you will conscientiously discharge the Duty you owe to God and your Country, by going according to your Evidence, and finding the Prisoner guilty.

*Mr. Recorder.* GEORGE LEMLEN of the Jury, the Prisoner at the Bar stands indicted for the Murder of Sir John David Goslow. The Indictment charges,



that the Deceased was strangled by one Matthew Mahony, and that the Prisoner was present, aiding and abetting him in the Fact.

To support this Charge, the Prosecutors have called two Witnesses, Edward Jones, and Margaret his Wife. Edward Jones says, that he lodged in the Night between the eighteenth and nineteenth of January last, in the Royal Man of War, in the Sleep-room, which adjoins to the Purser's Cabin; where, he says, the Deceased was confined. He tells you, that about Two in the Morning he was waked by his Wife, and heard Sir John crying out, Here's rotten Guinea, take it, take it, don't murder me, much I do? He says Sir John gave several jerks with his Throat like a Man expiring, and quickly after was still. He tells you, that then a Light being brought into the Cabin, he got up and look'd through a Crevice in the Partition, and saw the Prisoner at the Bar engaged in rifling Sir John's Pockets, Mahony standing by with a Candle in his hand. He says, that Sir John was dead, as he believes, when the Prisoner was rifling his Pockets; and from what he observed the next Morning, that he was strangled.

Margaret Jones is something fuller in her Evidence, as to some Circumstances previous to the Murder; but in the main, agrees with her Husband touching the rifling of Sir John's Pockets, and the way dead. She is sure Mahony held the Candle, and that another Person, whom she takes to be the Prisoner, was rifling his Pockets. She says, he had not a perfect view of him; but by his Bulk, and from what her Husband then told her, he concluded at the time, that it was the Prisoner at the Bar. She says further, that when Mahony and that other Person went out of the Cabin, she heard Mahony say, Whicher shall I run? The other answered, Follow me, my Boy. And then she says, the crew it was the Prisoner made that Answer by his Voice. She says she knows the Prisoner's Voice perfectly well, having been acquainted with him two Years.

The Prosecutors then read the Prisoner's Examination, which contains a full Confession of the Fact, as laid in the Indictment. He says, he has heard, Gentlemen, what the Prisoner has said to this Charge; He admits that he was sent into the Purser's Cabin, but says, that being much in Liquor, he knows nothing of what pass'd there; and denies that he had any Concern in the Murder. He called some Witnesses to his Character, and I shall observe to you, that one of his Witnesses, David Wilder, says, that the Prisoner's Voice is distinguishable from the Voices of all the Men in the Ship. This will give some Weight to Margaret Jones's Evidence, That he knew him by his Voice.

And, Gentlemen, upon the whole, if you believe the Evidence for the King, and give Credit to the Prisoner's Confession, you must find him guilty. [The Jury to the Prisoner, in answer of their Verdict, and after a short Space returned again.]

CL. of Arr. Gentlemen, answer to your Names: John Neph.

John Neph. Here. [And so of the rest.]

CL. of Arr. Gentlemen, are you all agreed of your Verdict?—Jury. Yes.

CL. of Arr. Who shall say for you?—Jury. The Foreman.

CL. of Arr. Charles White, hold up thy Hand. One of the Jury look upon the Prisoner; how say you? Is Charles White guilty of the Felony and Murder whom he stands indicted, or not guilty?—Jury. Guilty.

CL. of Arr. What Goods or Chattels, Lands or Tenements, had he at the time of the said Felony and Murder committed, or at any time since, to your Knowledge?—Jury. None.

CL. of Arr. Harken to your Verdict, as the Court hath recorded it: You say, that Charles White is guilty of the Felony and Murder whom he stands indicted, and that he had no Goods or Chattels, Lands or Tenements at the time of the said Felony and Murder committed, or at any time since, to your knowledge, and so you say all.

CL. of Arr. Keeper, take Charles White the Prisoner from the Bar, and lock him up; he stands convicted of wilful Murder.

On Saturday the 25th of March the Prisoners were brought again to the Bar, in order to receive their Sentence; and the Court proceeded thus:

CL. of Arr. Cryer, open the Court.

Cryer. Oyez, Oyez, all manner of Persons that have any more to do before the King's Majesty's Justices of Oyer and Terminer, and general Goal-Delivery for this City and County, and were adjourn'd over to this 1<sup>st</sup> and 2<sup>d</sup> Place, I do now, and give your Attendance.

CL. of Arr. Mr. Recorder, will you please that the Prisoners shall be call'd up to Judgment?—Mr. Recorder. Yes.

CL. of Arr. Keeper, let Matthew Mahony, Samuel Gooden, and Charles White to the Bar; which was done.

Mr. Recorder. Ask them what they can say to hinder Judgment.

CL. of Arr. Matthew Mahony, hold up thy Hand. Thou hast been indicted of Felony and Murder, thou hast been thence arraigned, thou hast pleaded thence not guilty, and for thy Trial, thou hast put thyself upon God and my Country; which Country hath found thee guilty; what hast thou to say for thyself, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

[He offered nothing, but begg'd for Time to prepare himself.]

CL. of Arr. Samuel Gooden, hold up thy Hand. Thou hast been indicted of Felony and Murder, &c. what hast thou to say? &c.

[He offered nothing, but begg'd for Time to prepare himself.]

CL. of Arr. Charles White, hold up thy Hand. Thou hast been indicted of Felony and Murder, &c. what hast thou to say? &c.

[He offered a thing, but declared he was done with it, and begg'd for Transposition per Life.]

CL. of Arr. Cryer, make Proclamation for Silence.

Cryer. Oyez, The King's Majesty's Justices finally charge and command all manner of Persons to keep Silence whilst Judgment is giving, upon pain of Imprisonment.

[Then Mr. Recorder spoke to the Prisoners thus:]

Mr. Recorder. Samuel Gooden, Matthew Mahony, Charles White, and Charles White, you have been all convicted, upon very full Evidence, of one of the greatest Crimes human Nature is capable of, deliberate and wilful Murder. A Crime, which in all Ages, and throughout all Nations, has been had in the highest Disrepute. For however Mankind have been a crime, they have been in one Sentiment concerning Murder, that it was the greatest of all Crimes; and if they had been all Witnesses to

the Pronunciation of the Precept, Whosoever sheddeth Man's Blood, by Man shall his Blood be paid.

But this Crime, great as it is, is capable of several Aggravations, and among them the Circumstances which attend it.

To lay violent Hands upon a Person who never gave his Murderer the least Offence, whom perhaps he never saw till the Moment he was murder'd out for Execution; and to do this for Hire, flows a kind of Indignity, I fear, to all the Impieties of Humanity.

But when this is the Case of one, who can procure all this Mischief, and involve others in this Guilt; especially as the Person to whom the Violence is offered, is one to him by the Ties of Blood or Friendship?

'Tis true, Murders of this kind are not very frequent, and less to this Nation than in any other. But in the Case in which three of you are concerned, they all occur.

A Gentleman of Distinction is murdered by Persons, who, in a manner, were Strangers to his Face, and his only Brother aiding and abetting the Murder. I may say thus much, because your Country hath upon full Evidence found it so.

I will carry these Reflections no farther: I choose to leave that Part to your own private Consideration.

I hope I need not persuade you to employ the Time you have to lose, in making your Peace with God. I hope, I say, that a Sense of your own Condition hath already put you upon that Work. And pray don't fail for yourselves to be diverted from it by the Hope or Expectation of Mercy from the Crown. His Majesty's Disposition to Mercy is great; but his Love of Justice, and his Love to his People is still greater. And because I would not mislead you, nor have you deceive yourselves on a Case of this Importance, I think it my Duty to deal freely with you.

I do not let what Room any of you have to expect Mercy.

You who have been the immediate Actors in this Affair, what have you pleaded in mitigation of your Crime? One says, he is a poor preb'd Servant, and the other, that he was drunk when the Fact was committed. Neither of these Excuses can avail you. You both undertook the Murder for Hire, and the Gentleman's Pockets, and shared the Plunder between you.

You had, perhaps, no Design upon the Gentleman's Life, till near the Time of Execution. This is no Excuse. It shows you were ready to shed innocent Blood at the first Call. That you yielded to the first Temptation. And if Drunkenness could be admitted as an Excuse for Crimes of this Nature, this would be no World of Vice and Sobriety.

You Sir, who have been the principal Actor in this Affair, what have you offer'd for yourself?

You admit, that you employ'd a Number of People to seize your Brother, here in the Heart of the City, and in the Face of the Sun, and to carry him on board the Ship of which you had then the Command. This is too evident to be denied, and for that Reason only, I fear, is admitted.

To give him Colour to this unparallel'd Outrage, you say, that your Brother was distressed, and that you took him on Board in order to put him under Confinement. Admitting that your Brother was distressed, was the Place you carried him to, or the Hands into which you committed him, or the Treatment which he met with from them before he was got aboard the Barge, at all proper for his Case, or fit for a Brother to think of?

You called Mrs. Gwyn's to prove, that Mahony was to have had five Pounds a Month for looking after him at her House. She remembers nothing of Mahony. But had that been proved, could it at all avail you to say, that for three Weeks before the Murder was committed, you intended to have confined him under the Care of the very Man who now appears to have murdered him?

Indeed, you have denied all Concern in the Murder, or the least Knowledge of it. But it hath been proved by three Witnesses, that you were in the Cock-pit while the Murder was committing, and might have heard the Noise and Struggle in the Cabin, the Cry of Murder, and your Brother's dying Groans, as well as they did.

Now, two of them are positive, that you stood Confined at the Door, with a drawn Curtain in your Hand, while the Fact was committing. One of them says that you delivered a Candle into the Cabin, after the Cry of Murder ceased; and that you, soon after, lock'd the Door, and took the Key with you. And it is agreed on all hands, that when the Door was open'd the next Morning, your Brother was found dead and murdered.

These Facts, with other Circumstances, are strong and pregnant Proofs of your Concern in the Murder; unless the Credit of the Witnesses could be impeach'd, which you have not shown good to do.

It was charged as a Circumstance against you, that after the Fact was committed, Mahony and White were sent away by you. This likewise you denied. But it came out of the Mouth of a Witness called by yourself, that they went up to the Yard to leave from you.

I have nothing more to do, before I proceed to that which the Duty of my Place obliges me to, than to exhort you all to make your Peace with God by a sincere and hearty Repentance. His Mercy is infinite, and to that we must leave you. For the Judgment of the Court is, That you, Samuel Gooden, Matthew Mahony, Charles White, and Jane Williams, go from hence to the Prison for the Term of three Years, and from thence you shall be sent to the Place of Execution, where you shall be legally put to death. And the Lord have Mercy on all our Souls.

Then the Keeper carried away the Prisoners to the Goal, to be re-ferred to their Execution.

On Wednesday the 15th of April following, the Professors Matthew Mahony, Samuel Gooden, and Charles White, were executed at Tyburn, according to the Sentence pronounced against them. They all confess'd the Fact. The Body of Mahony is hung in Chains near the Place where the horrid Fact was committed.

At the same Court George Bryan, Edward M'David, and Wm. H. James, were indicted, tried, and convicted, for a Misdemeanour, in force by selling and leasing Sir John in the Parish of St. Andrew, in the said City and County, and carrying him on board the Ship belonging to the Royal Man of War, and were fined each, £100; and for each year more, and then each to give Security for his good Behaviour for one Year more.



A N  
A P P E N D I X,  
CONTAINING SEVERAL  
R E C O R D S  
RELATING TO THE FOREGOING  
T R I A L S A N D P R O C E E D I N G S.

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<i>Rex versus Smith, for a Libel.</i>	13	<i>Rex versus Vaughan, for High-Treason.</i>	-	57
<i>Rex versus Cellier, for a Libel.</i>	14	<i>Rex versus Con<sup>t</sup> Warwick &amp; Dominum Mohun, for the Murder of R. Coote.</i>	-	58
<i>Rex versus Dominum Grey &amp; al<sup>s</sup>, for a Misdemeanour in debauching the Lady Henrietta Berkeley.</i>	16	<i>Regina versus Fuller, for a Cheat.</i>	-	ibid.
<i>Rex versus Major &amp; Common<sup>s</sup> Sc Civ<sup>s</sup> civitatis Londini, as Information in nature of a Quo Warranto.</i>	ibid.	<i>Regina versus Hathaway, for a Cheat.</i>	-	59
		<i>Regina versus eundem, for an Assault.</i>	-	ibid.
		<i>Regina versus Bouchier, for High-Treason.</i>	-	60
		<i>Regina versus Lindley, for the same.</i>	-	ibid.
		<i>Rex versus Coke and Woodburne, for slitting the Nose of Edward Cripe.</i>	-	ibid.



## ing



ing to the Tenor in their Petitions shewing, and their Petitions shall be your sufficient Warrant and Discharge for the same.

*The Wit of Heretics combured.*

**R**EX Vicecomites London salutem. Cum Reverendas in Christo Pater Johannes, London Episcopus, nobis significavit, quod cum ipse in quodam heretice pravitatis regimine quatenus Bartholomeum Legati, seditionis adversum civitatem London, ubi London Episcopi esset, et iudicium, tunc et legitime procederet per ista inductum, deinde, postposita, et per confessiones ipsius Bartholomei Legati eam prefatum Episcopum iudicialiter factis et recognitis, compere et invenit prefatum Bartholomeum Legati compluribus sceleribus erroribus, falsis opinionibus, heresibus et blasphemis exorandis, et sceleratis dogmatibus catholicis et orthodoxis fides et religioni, et sacrosanctis Dei Verbo expressis contrariis et repugnantibus, scienter, malevolis, animosis, perniciis, obduratis, planeque incorrigibiliter coherere, tenere, affirmare, et publicare; idem Reverendus Pater London Episcopus, cum consilio et consensu tam Reverendorum Episcoporum et aliorum Theologorum, quam laici eam perituros in iudicio affiden et assiden, eundem Bartholomeum Legati, per se tantum suam defensionem, obduratum, contumacem, et incorrigibilem hereticum pravitatis, decessit, et declaravit, etque occasione tamque preteritum hereticum, et accubum patrum et consanguineorum, ac ecclesie Christi et fidelium commotionem scilicet et amputationem fore. Cum igitur facta esset Ecclesia non habens quod ultionis facere et exequi vellet in hac parte, idem Reverendus Pater prefatum Bartholomeum Legati, ut blasphemum hereticum, hereticum nobis seculari relique condigna animadversione placendi, prout per Literas Patentes prefati Reverendi in Christo Patris London Episcopi in hac parte superius confectis nobis in Cathedrali auctoritate certioravit. Nos igitur ad solenne iudicium, et fidei catholice defensionem, volentes Ecclesiam sanctam, ac iura et libertates ejusdem, et fidei catholicam maneat et decoretur, ac hujusmodi heresibus et erroribus ubique (quantum in nobis est) eradice et extirpare, ac hereticos fidei contrarios animadversione condigne puniri, atque demereri, hujusmodi hereticum in forma predicta convictum et damnatum iuxta leges et consuetudines regni nostri Anglie in hac parte confectis, et igitur incendio comburi debere. Vobis precipimus, quod dictum Bartholomeum Legati, in custodiam vestram exitis, apud West-Smiffeld in loco publico et aperto, ex causa predicta, coram populo publice igni committi, ac ipsum Bartholomeum Legati in eodem igne realiter comburi facitis in hujusmodi criminali detrahentem, alienantem, Christianitatem exemplum multum, ne in simile crimine abharet; et hoc sub periculo incumbente nullatenus contemnit. Testis, &c.

*Henry Ibbote.*

*The Wit for burning an Heretic in English.*

**T**HE King to the Sheriffs of London, Greeting. Whereas the Reverend Father in Christ, John Bishop of London, hath signified unto us, that when he in certain Bullets of heretical Pravity—such as were Bartholomeus Legati, our Bishop in the City of London, of the said Bishop of London's Decree and Jurisdiction, rightly and lawfully proceeding by Acts executed, drawn up, and by the Confessions of the said Bartholomeus Legati, before the said Bishop judicially made and acknowledged, hath found the said Bartholomeus Legati very many wicked Errors, false Opinions, Heresies, and cursed Blasphemies, and impious Doctrines, capriciously contrary and repugnant to the Catholic Faith and Religion, and the holy Word of God, knowingly and maliciously, and with a pertinacious, obdurate, and plainly incorrigible Mind, to believe, hold, affirm, and publish; the same Reverend Father the Bishop of London, with the Advice and Consent as well of the Reverend Bishops and other Divines, as also of Men learned in the Law, in Judgment firm, and unwilling, the same Bartholomeus Legati, by his detestable Scandals, hath pravitously deserved, and declared to be an obdurate, contumacious, and incorrigible Heretic, and, upon this Occasion, as a stubborn Heretic, and a most outrageous Member, to be cut off from the Church of Christ, and the Communion of the Church. Whereas the holy Mother Church hath further to do and proceed in this Part, the same Reverend Father hath left the aforesaid Bartholomeus Legati, as a blasphemous Heretic, to your secular Power, to be punished with condign Punishment, as by the Letters Patents of the said Reverend Father in Christ the Bishop of London in this Behalf above made, hath been testified unto us in our Chancery. We, therefore, as Zealots of Justice, and a Defender of the Catholic Faith, and willing to maintain and defend the Holy Church, and Rights and Liberties of the same, and the Catholic Faith, and such Heresies and Errors as aforesaid, whilst in us lie, to root out and extirpate, and to punish with condign Punishment such Heretics to come to, and seeing that such an Heretic, in Form aforesaid convicted, and condemned according to the Laws and Customs of this our Kingdom of England in this Part aforesaid, ought to be burned with Fire; we do command you, that the said Bartholomeus Legati, being in your Custody, you do commit publicly to the Fire before the People, in a public and open Place in West-Smiffeld, for the Cause aforesaid; and that you cause the said Bartholomeus Legati to be really burned in the fire Fire, in Detestation of the said Crime, for the manifest Example of other Christians, lest they file into the same fault; and this, that you do no more, under the Pain that shall follow therein. Witness, &c.

*The [forged] Indictment and Outlawry of Sir John Oldcastle, Lord Cobham, for High-Treason.*

*Hil. 1. Hen. V. Rat. 7. B. R.*

**A**LIAS coram Galfrido Roos de Hamk, Heretico et Scio, Gulielmo Cicerio Major civitate London, Hugone Hols et facis subc. Dominus Pater, ad inquisitum per sacrum probum et legitimum hominem de curia Domini Regis London, et iuribus iudicem, ac de com. Midl. tam sua libertates, quam exas, de omnibus et singulis premissis et iudicandis, per quosdam fideles Domini Regis London, vulgariter nuncupatos, alios in crinate, falsarios, et com. predictis factis et perpetratis, necnon de omnibus premissis, insurrectionibus, rebellibus, et seditionibus in civitate, suburbis, et com. prout quocumque et quocumque, factis, perpetratis et ad eandem premissas, insurrectiones, rebelliones, et seditiones iudicem et terminare secundum legem et consuetudinem regni Domini Regis Anglie, per literas ipsius Domini Regis premissas, assignat apud West. de Mercum proximo post festum Epiphanie Domini, anno regni Regis Henrici quatuor post consecrationem anno, per sacrum xii. juxta exhibit premissas, quod Johannes Oldcastle et Cooley in com. Kent. et alii Lollardi vulgo nuncupati, qui contra fidei catholicam doctrinam opinionibus hereticis, et alios errores manifestos legi catholicis repugnantes dum temerarie truerunt, opinionibus et erroribus predictis manebant, et in illis fuisse premissas valentes, quando regis petitis, et tam fides regis Domini nostri Regis, quam fides et officium Prefatus dignitatis ipsa regnum Angli in prosperitate conservarent, falso et proditorie machinatio, tam fides regis, quam fides et officium prefatus, necnon omnia religionem ipsam dictam regnum Angli penitus aduolare, ac Dominum nostrum Regem, fratres suos, prebites et alios magnates ejusdem regni interficere, necnon viros religiosos, relictos alios divites et religiosos observantem ac occupationes mundanas proscire, et tam ecclesias cathedrales, quam alias ecclesias et domos religiosas de reliquis et aliis bonis ecclesiasticis totius regni (polite, ad funditus ad terram redirent, et dictum Johannem Oldcastle regentem ejusdem regni constituit, quamplura regnum secundum eorum voluntates, infra regnum prefatum, quasi grex fidei capite, in finalem destruditionem, tam fidei catholicam et olem, quam fides et majestatis dignitatis regis infra idem regnum ordinare, falso et proditorie ordinarent et propellerent, quod ipso infanti cum quampluribus rebellibus Domini Regis ignotis, ad auxilium viginti militum hominum

de diversis partibus regni Angli modo gubernantibus, privatum inferrent, et die Mercurii proximo post festum Epiphanie Domini, anno regni Regis predicti predicti, apud villam et parochiam sancti Regis extra Barum veteris Templi London, in quodam magno campo habere convenerunt, et inferni obsequio pro asphaldo populo fidei premissis premissis, qui quidem de Mercum assignat villam et parochiam predictam J. Oldcastle et alii in hujusmodi populo premissis premissis, predictum Dominum nostrum Regem, interfectum et occidit. Tamen decessit Cicerio Johanne, de Lonsdale, et Hamond de Lancastrie necnon prebites et magnates predictis interfecti, necnon ipsam Dominum nostrum Regem, et heredes suos, de regno suo predictis extirpatores, et premissis omnia et singula, necnon quamplura alia mala et intolerabilia, facere et perpetrare illis et proditorie propellerent et machinarent, et huiusmodi veritas canonum predictum modo premissis armis premissis modo insurrectionis contra hegemonas fidei equitantes ac debellantes dictum Dominum nostrum Regem, nisi per ipsum manu fidei gratie impediti fuissent. Quod quidem obsequium Demetrius Rex noster, certis de causis, coram eo realiter fecit committendum. Per quod preceptum fuit Vice, quod non omittit, Vice, qui capere facerent Johannem Oldcastle, h. Vice, et salvo, Vice, ita quod habere e. ryan juxta coram Domino Rege apud Westmousteriam ad hanc diem, factis de Mercum proximo post octavas sancti Hilarii, illis eodem termino ad respondendum Domino Rege de premissis, Vice. Ad quem diem et locum coram Domino Rege Vice, quod exigi faceret eum de com. in com. quocumque utique, si non, Vice, et Vice, tunc non caperet, et salvo, Vice. ita quod habere corpus ejus coram Domino Rege in octavas sancti Johannis Baptiste ex tunc proximum sequentes, ubique, Vice, ad respondendum Domino Rege de premissis et solennis fupitum fidei impediti. Ad quem octavas sancti Johannis Baptiste, et regis R. Henrici quatuor post consecrationem secundo, Johannes Sutton et Jo. Michell Vice Midl. coram Domino Rege retulerunt, quod ad com. Midl. eorum regis regis Henrici de Joris proximo ante festum R. Remarce Apollinis, et regis R. Henrici quatuor post consecrationem fecundo, et ad quatuor com. ex tunc ex proximo premissas, predictum Johannem Oldcastle exas fuit, et non comparuit; et quia ad nullum eorum com. comparuit, ideo prefatus Cicerio et alii com. predicti eorum fuit, per quod inquisitur de vobis et eandem fuit.

*Rex versus Dominum Andley, for a Rape.*

*2 Cor. 1.*

Willel. de J. Unus pro Domino Rege fuit sacramentum suum premissis, Quod Martinus dominus Andley, noster de Foresti Gifford in comitatu Wilt, et Regius Broadway de Foresti Gifford

dicti in comitatu predicto generosus, armatus De pre oculis fuit non habentes, sed intelligens aduolentia mala et fidei, videlicet de Joris, anno regni Domini Regis Caroli, De gratia Anglie, Strath, Francie, et Hibernie Regis, fidei defensionem, h. ryan, quod fupitum fupitum predicti et

*4 The Record appears to have several Radices in it. See Trials Vol. 1. p. 26. N<sup>o</sup>. 5. and Fox's Acts and Mon. Vol. 1. p. 497.*

*5 Vol. 1. p. 357. N<sup>o</sup>. 11. and Hist. Reg. 217.*



in super Antonem dominum Audley, uxorem prout dominus Marius Audley, in pace Dei et dicti Domini Regis habere cessant infans forecunt. Et prout Stephanus Broadway predictus Antonem dominum Audley, vi et armis, contra voluntatem ipsius Antonis ad tunc et ibidem abstraxit et felonice rapuit, ad ipsum Antonem ad tunc et ibidem contra voluntatem suam violenter et felonice carnaliter cognovit, contra pacem Domini Regis nunc, coronam, et dignitatem suam, et contra formam statuti in huiusmodi casu editi et prova.

Et ultra, juratores predicti dicunt super feloniam suam predictam, Quod predictus Marius dominus Audley predictus vicinus die Junii, ante factis supradictis, apud Fontell Gifford predictam, in comitatu predicto, felonice fuit prostratus, assassinatus, et confectus, stratus, prostratus, adspersus, et mortuus nactus Edmundum Be. ad feloniam predictam, in forma predicta felonice faciendo et perpetrando, contra pacem dicti Domini Regis nunc, coronam et dignitatem suam, et contra formam statuti predicti.

### Rex versus Dominum Audley (f), for Sodomy.

Willel. II. Juratores pro Domino Regi super feloniam suam predictam, Quod Marius dominus Audley, nuper de Fontell Gifford in comitatu Wilts, Deum per oculos non habuit, sed naturae ordinem respiciens, sed infirmitate diabólica mox et seductus, primo die Junii, ante regni Domini nostri Caroli, die sexto, apud Fontell Gifford predictum in dicto comitatu Wilts, in domo maritalium quondam Martini domini Audley, ibidem vi et armis in quondam Florence Fitzpatrick, uxorem, infans fecit, et cum eodem Florence F. ad tunc et

ibidem, nequie, diaboli, felonice, et contra naturam rem Venereum habuit, ipsam F. ad tunc et ibidem carnaliter cognovit, peccatumque illud Sodomitice detestabile et abominandum, Angliis vocat Buggery (inter Christianos non nominandum) ad tunc et ibidem cum eodem Florence F. nequit diaboli, felonice, et contra naturam commisit et perpetravit in magna Dei omnipotentis diffidentiam, ac totius humani generis dedecus, ac contra pacem dicti Domini Regis nunc, coronam et dignitatem suam, et contra formam statuti in huiusmodi casu editi et prova.

### Rex versus Johannem Hampden (g), in the Case of Ship-Money.

Trist. 13 Car. I. in 20m.

Memorandum, quod heri Domini Regis auctor sub sigillo huius Scaccarii per concessu Baronum hic enarravit in hac verba:

II. CAROLUS Dei gratia Anglus, Scotus, Francie, et Hibernie Rex, fidei defensor, &c. Vis Backs salutem. Cum diversis de lapsariis domini famosi in schola huius brevis annos (sic), virtute brevis nostri sub magno sigillo nostri Anglie regni dat quatuor die Anglie, a quo regni nostri antecessores, assensu et auctoritate fuerit super lapsariis peritus in ead schola nominatus, in re veritas provident natus pro patria, una cum apparatu ad ead peritus, in eod heri pariter mentionatus, quibus quatuor lapsariis dicitur formae huius assensu et auctoritate, et non solus et solus edicti, pro brevis nostro de censorum regni dat anno die Martii, anno regni nostri duodecimo, sub magno sigillo nostro predicti enarrat, prima curat predicti peritus una cum lapsariis dicitur formam super ipsos censuratus, in cur Cancellarii nostri censuratus fuerit. Ac per brevis nostrum de Mathias sub eodem sigillo, genus dat quatuor die Ianuarii mensis Maii in Scaccario nostro milis fuerit pro ultimum lapsariis super iude balcani, pro ut tertium predicti brevis regni dat quatuor die Augusti, anno regni nostri undecimo, ac per predicti brevis de Centuria sub sigillo nostro super iude balcani in dictum Scaccarium nostrum milis, et ibi de recordi in custodia Rememorati nostri remanens plenius apparuit, ubi percipimus, quod nos omni propter aliquid libertatis quare ad nos, et per probos et legales homines de balcani facit predicti lapsariis peritus in dicti schola nominatus et ipse, quod iure coram Baronibus de Scaccario nostro apud Winton in octavo mensis Trinitatis proximo fuerit, ad ostendit et proponit, siquid per se debeat, vel dicere faciat, quare ipse de predicti lapsariis dicitur formam super ipsos modo et forma predicti assensu et auctoritate, et non solus, in schola dicti lapsariis, auctoritate et inde faciente nos debet ad alios faciendo et recipi ut in premissis, quod cur solus tunc ibidem dixerit ordinatus et brevis dicti lapsariis, et auctoritate et non per nos in filiis factis. Tunc Henrici Darceney Milis, apud Winton, vicinior secundo de Winton, auctor regni nostri decimo tertio. Per ratum.

Memorandum de eodem anno Regis in memorandis notulatores Pethe, Tenor scholae predicti in brevis predicti memoratur, quod Johannem Hampden, sequitur in hac verba. I. Scholae de nominibus certis personarum in comitatu Backs, et comitatu Summar super ipsos assensu et auctoritate in veritas provisionem natus de guerra, una cum apparatu et alii eius regni, virtute curat predicti brevis sub magno sigillo Anglie regni dat quatuor die Anglie, anno regni Domini Regis nunc Caroli undecimo, et in cur Cancellarii Domini Regis, virtute brevis de Centuria sub sigillo nostro enarrat, regni dat anno die Martii, anno regni sui duodecimo, et ibidem de recordi in casibus Rememorati Domini Regis etiam plenius apparuit.

Stroake Mandavit, I. Johannem Hampden Fugit. Ad quem diem Antonius Chelton Burensis, Vis comitatu predicti, quod predicti Johannem Hampden nunc, quod per Nicolaum Aris, Robertum Alexander, Richardum Harnden et Willielm Heyborne, probos et legales homines de balcani, fuit fecit, predicti Johannem Hampden, inter alii, quod iure coram Baronibus infra scriptis ad diem et locum infra contentum, ad ostendit et proponit si quid per se debeat, vel dicere faciat, quare ipse de predicti summa super ipsos assensu et auctoritate, et non solus, in schola predicti lapsariis, auctoritate et inde faciente nos debet, propter alios ibi precipitur. Et modo, felicitas et de sanctis Trinitatis in tres septimas venit hic predicti Johannes Hampden, in schola predicti nominatus, in propria personam sua, et petit assensu brevis de Sancti facies predicti, etiam ejusdem, ad predicti scholae dicti assensu, et c. legimus et petit assensu predicti brevis, regni dat quatuor die Anglie, anno regni dicti Domini Regis nunc Caroli undecimo, in brevis de Sancti facies mentionatus, et si legitur in hac verba:

I. Carolus Dei gratia Anglus, Scotie, Francie, et Hibernie Rex, fidei defensor, &c. Vis comitatu Backs, Balli et Burgenses burgi et parochie de Buckingham, Major, Balli et Burgenses burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eisdem burgis et parochie, et membris eorundem, et in villis de Agnewdenham, Wendover, et Marlow magna, ac in comitatibus aliis burgis, villis, hamlet, et alii locis in dicto comitatu Backs, salutem. Quia dat nobis nobis quod predictores quid, prius, et nunc grassatores, tam nocentem Christianis balles

Mahometanis, quam alii congregatis, naves et bona ac mercem non solum subditi nostri, verum etiam sudores amicos nostri in mari, quod per quem Angliam ad olim delenda consuevit, celare disceptantes et spoliantes, ad liberum suum depereunt, homines in eisdem in capivitate micissima mancipantes: Cuius ipsos conspicias navium indicis prepositas ad mercatores nostros ulterius molestandi, et ad regnum gravandi, nulli civitas remedium apponitur, eorumque comitatus veritas obstat: Consideratis etiam periculis, quae undique per gentium temporibus imminet, ut quod nobis et subditi nostri, defensionis maris et regni omni futurum, quae potest, accelerare convenit. Nos volentes defensionis regni, salutis maris, securitatis subditi nostri, salva conservanda auxilium et mercandis, ad regnum nostrum Anglie nunc, et de eod regno ad partes externas transire, auxiliante Deo, providere, maxime cumque nos et progenies nostrae Regis Anglie domini maris predicti semper habitum extiterit, et plurimum nos uideret, si honor die regis nostris temporibus deperat, ut in aliquo minaret, quod omnis utilitas defensionis, quod omnes tangat, per omnes debet sapienter, prout per legem et consuetudinem regni Anglie fuit conditum, vobis praefati Vicecomiti, Balli, Burgenses, Major, probis hominibus, et omnibus aliis quibuscumque, vobis membris burgi, villae, villar, hamlet, et locis supradictis, et cunctis membris, in fide et ligentia, quibus nobis tenemus, et licet nos et hominem nostrum diligamus, necesse fore forsibus omnium quae nobis fortissimae potentes, fructus inveniendos mandamus, quod usque in fine de guerra, portu, quodringunt et quinquagesimae solus, cum hominibus tam magistris peritis, quae marinarum valentibus et expertis cum et odiosum ad minus, ac etiam tormentis tam majoribus quam minoribus, pulverem tormentano, ac balis et alii, quibus armariis necessarii pro guerra sufficiunt, et cum duplici equipamento, necesse cum vidualibus aliisque ad primum diem Martii huius proximo sequenti, ad nos homines competentes, et abunde in viginti et sex septimas ad ead usque, rem in vidualibus, quae in hominibus, fide, et alii ad nos occurrerit per tempus illud, super defensionem maris in obsequio nobis in comitatu subditi nostri (sicut ead) maris ante nos predicti primum diem Martii continemus) et prout ipse ex parte nostra dixerit moratur, parari, et ad portum de Portsmouth citra dictum primum diem Martii die faciat, ita quod sint ibi eod die ad ultimum, ad proficiendum exinde cum navibus nostris, et navibus aliis subditi huiusmodi nostri, pro tunc maris, defensione nostrum et nostrum, regulis, et de bellatione quoruncumque, mercatorum nostrorum, et alios felicitas felices predicti in domum nostram ex causa necessitate de diversitate, vel abinde ad propria declinantes lapide mare gratia facit melius diriguntur. Assignavimus autem vobis Vis comitatu Backs, Balli et Major burgi et parochie predicti, ad aliquos dies vel plures velletis, quatenus te praefati Vis comitatu Backs usum esse volumus, infra triginta dies post receptionem huius brevis, ad assensu quantum de ead triginta dies post burgos de Buckingham et Chipping-Wiccombe, alias Wiccombe, cum membris eorundem, separatim per nos assensu debet. Et si huiusmodi assensum infra predicti triginta dies per vos daret, vel plura velletis fieri non emergent, tunc assignavimus te praefati Vis comitatu Backs ad assensum huiusmodi super predicti burgos et parochie, et membris eorundem, faciendo prout rationabiliter videri faciat, et volumus, quod de isto facto te praefati Vis comitatu Backs, sub sigillo nostro predicti Majoris et Ballivorum ead carum assignavimus omnes te praefati Balli Burgi et parochie de Buckingham, ad assensum omnes homines in eodem burgo et parochie, et membris ejusdem, et ter tenentes, in eisdem naves vel partem naris predicti non habentes vel in eodem non defensiones, ad contribuentis expensis circa provisionem praefatorum necessarii, et super predicti burgum et parochie, cum membris ejusdem (sicut praefatorum assensum et potest), viz. quolibet eorum iuxta statum suum et facultates suas et portiones suas ipsi assensu per distributiones, alios modo debitos levandi et collectores in hac parte nominandi et constituendi et omnes res, quae rebelles et contumaces inveniant in premissis in carcere mancipandi, in eod morantur, quo-































[illegible][illegible]

Abique hoc, quod idem Major & Communit, ac Civitas Lond-  
on, de libertat, privilegii & franchi<sup>is</sup> super dictum Dom Regem  
nos per tempus<sup>is</sup> in informatione predicta superius agimus, ut  
supra, his alijsq<sup>ue</sup>, prout per inferius, tam pro dicto Dom Regem  
quam superius posuimus, quae omnia & membra London & Commu-  
nitatis, ac Civis & ff. London, pariter fieri viderent, unde prout  
inferius, quod libertat, per i<sup>ur</sup> & franchi<sup>is</sup> ff. locutionibus tam  
per penam deinde dicitur, & ad inferius, ac quod ipse, quod per  
predicta ff. ab hoc casu dimittitur.

[illegible]











































































